

EXHIBIT B

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)
)
SECURITIES INVESTOR)
PROTECTION CORPORATION,)
)
Plaintiff-Applicant,)
)
vs.) 08-01789 (SMB)
)
BERNARD L. MADOFF)
INVESTMENT SECURITIES, LLC,)
)
Defendant.)
)
)
In re:)
)
BERNARD L. MADOFF,)
)
Debtor.)
)

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Videotaped Deposition of BERNARD L.
MADOFF, VOLUME IV, taken on behalf of the Customers,
before K. Denise Neal, Registered Professional
Reporter and Notary Public, at the Federal
Correctional Institution, 3000 Old Highway 75,
Butner, North Carolina, on the 9th day of November,
2017, commencing at 8:43 a.m.

* * * * *

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<p>1 THE VIDEOGRAPHER: We're now on the 2 record. Please note that the microphones are 3 sensitive and may pick up whispering and private 4 conversations. Recording will continue until all 5 the parties agree to go off the record. My name is 6 Bob Collier representing Veritext Legal Solutions. 7 Today's date is November 9th, 2017 and the time is 8 approximately 8:43.</p> <p>9 This deposition is being held at Butner 10 Federal Correction Facility located at 3000 Old 75 11 Highway, Butner, North Carolina and is being taken 12 by counsel for the Plaintiff-Applicant. The caption 13 of this case is Securities Investor Protection 14 Corporation, Plaintiff-Applicant v. Bernard L. 15 Madoff Investment Securities, LLC, Defendant.</p> <p>16 This case is being held in the United 17 States Bankruptcy Court, Southern District of New 18 York, Case Number 0801789 (SMB). The name of the 19 witness is Bernard L. Madoff. At this time the 20 attorneys present in the room will identify 21 themselves and the parties they represent.</p> <p>22 MS. CHAITMAN: Helen Davis Chaitman on 23 behalf of numerous Defendants.</p> <p>24 MR. KRATENSTEIN: Andrew Kratenstein of 25 McDermott Will & Emery, LLP on behalf of the Sage</p>	<p>1 America.</p> <p>2 Q. (By Ms. Chaitman) Excuse me. National 3 Bank of North America. Thank you. And was this 4 generated by your firm or was it generated by 5 National Bank of North America?</p> <p>6 A. I believe it was generated by my firm.</p> <p>7 Q. Did you receive on a monthly basis from 8 National Bank of North America statements showing 9 the securities transactions conducted in that month 10 for your firm?</p> <p>11 A. I don't recall whether we received one. I 12 don't know. I mean, you know, you're talking about 13 1983. I don't know what the policy was. Typically 14 we would receive statements from the banks at the 15 end of a month.</p> <p>16 Q. Okay, okay. And, for example, here is 17 Exhibit 46, which is another statement that was 18 generated by your firm as well; right?</p> <p>19 A. Yes.</p> <p>20 Q. And do you know how the information was 21 obtained that was incorporated into these 22 statements?</p> <p>23 A. Well, these statements were generated by 24 us. They're showing the transactions according to 25 our records as they're done.</p>
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<p>1 Defendants.</p> <p>2 MS. DASARO: Stacy Dasaro, Baker 3 Hostetler, on behalf of the Trustee.</p> <p>4 MS. FEIN: Amanda Fein, Baker Hostetler, 5 on behalf of the Trustee.</p> <p>6 MR. GOLDMAN: Peter Goldman on behalf of 7 the witness, Mr. Madoff.</p> <p>8 THE VIDEOGRAPHER: Our court reporter, 9 Denise Neal, representing Veritext Legal Solutions, 10 will swear in the witness and we can proceed.</p> <p>11 BERNARD L. MADOFF, 12 having been first duly sworn, was examined and 13 testified as follows:</p> <p>14 EXAMINATION</p> <p>15 BY MS. CHAITMAN:</p> <p>16 Q. Good morning, Mr. Madoff. Yesterday you 17 identified a document which was marked as 18 Exhibit 38, which appears to be a January 31, 1983 19 statement bearing the name National Westminster 20 Bank?</p> <p>21 A. Uh-huh.</p> <p>22 Q. And it shows --</p> <p>23 MR. GOLDMAN: You've got to answer yes or 24 no, Bernie.</p> <p>25 THE WITNESS: Says National Bank of North</p>	<p>1 Q. Okay, okay.</p> <p>2 A. They're not the bank's records. So these 3 are just, you know, the transactions as they 4 appeared in this account.</p> <p>5 Q. Okay. And you testified yesterday that 6 these all reflect accurate transactions that were 7 fulfilled --</p> <p>8 A. That's correct.</p> <p>9 Q. -- is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And I'm showing you again 12 Exhibit 39, which is a January 31, 1983 statement of 13 transactions with National Bank of North America.</p> <p>14 A. Yes.</p> <p>15 Q. And is that an accurate reflection of the 16 transactions that were done in that prior month for 17 National Bank of North America?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Now, let me show you what I'm going 20 to mark as Exhibit 89. These are it says Schwab 21 blotters for 12-5-86 and it says house five.</p> <p>22 MS. FEIN: Thank you.</p> <p>23 MR. KRATENSTEIN: Thank you.</p> <p>24 Q. (By Ms. Chaitman) Can you tell me what 25 this document is?</p>

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<p>1 A. It looks like the activity that took place 2 in the Charles Schwab & Company. 3 Q. Okay. And, again, would these be actual 4 transactions that were conducted by your firm? 5 A. They would be. 6 Q. Okay. And would you have received in the 7 ordinary course of business some documentation from 8 Schwab evidencing these same transactions? 9 MS. FEIN: Objection. 10 THE WITNESS: It depends upon what period 11 of time. I mean, people stopped using 12 confirmations. Broker-to-broker confirmations were 13 eliminated after a certain period of time. I don't 14 know when that was. Before that period we received 15 confirmations on every trade every day. 16 After that there were no confirmations 17 because the trades went to the clearing corporation 18 and those trades were all netted, which is a 19 practice so that the transaction that you did with 20 Schwab doesn't -- would not be what you would 21 receive from the clearing corporation because they 22 net all the -- from market makers like Madoff what 23 happens is they take all of the transactions, all 24 the transactions that you had in a particular 25 security, so if we had every trade that we did with</p>	<p>1 only have one copy of this, but I'll show it to 2 everybody after you identify it. Can you tell me 3 what this is? 4 A. It reflects the securities we bought for 5 Vanguard and Wells Fargo. 6 Q. During this -- the period indicated? 7 A. During that period of time, right. 8 Q. Okay. And is this a report that was also 9 generated by your firm? 10 A. Correct. 11 Q. Okay. And were these transactions actual 12 transactions? 13 A. Yes. They were. 14 (Exhibit Number 91 was marked for 15 identification.) 16 Q. (By Ms. Chaitman) Okay. I'd like to show 17 you what I've marked as Exhibit 91. Can you tell me 18 what this document is? 19 A. It looks like a trade reporting blotter 20 under National Securities Clearing Corporation. 21 Q. Okay. Now, is the National Securities 22 Clearing Corporation generally referred to as NSCC? 23 A. Correct. 24 Q. And was NSCC the precursor to DTC, the 25 Depository Trust Company?</p>
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<p>1 say in General Motors for any of the thousands of 2 brokers that exist that buys and sells, if you sold, 3 for example, 2 million -- if you brought 2 million 4 shares from assorted brokers and then you sold 5 1,500,000 shares, they would send you what they call 6 a balance order at the end of the day that said you 7 bought or sold 500 shares, which is the net amount. 8 And they would give you the dollar amount 9 of the net practice. And -- and the person 10 guaranteeing the trade became the clearing 11 corporation. 12 Q. (By Ms. Chaitman) Was there a system in 13 place at your firm to verify the information you 14 received on a daily basis from the clearing 15 corporation? 16 A. Yes, you know, there was. I can't tell you 17 exactly what it was because I'm not part of the back 18 office operation. 19 Q. Okay. But there was such a system in 20 place? 21 A. Yes. 22 (Exhibit Number 90 was marked for 23 identification.) 24 Q. (By Ms. Chaitman) I'm going to show you 25 what I've marked as Exhibit 90, and I apologize. I</p>	<p>1 A. Yes, then they merged. 2 Q. Okay. So what does this document reflect? 3 It reflects trade date December 11th, 1986. Can you 4 tell me what this document shows? 5 A. It would show the transactions that we did 6 with other brokerage firms in the street but not 7 reflect any customer transactions. 8 Q. Okay. And is there an indication on this 9 document as to which brokerage firms were on the 10 other side of these transactions? 11 A. I don't believe so. 12 Q. The member number ID of 0158, was that your 13 member number? 14 A. No. Oh, yes. 15 Q. The first column on the left? 16 A. No. That's -- ours was 646. This member 17 ID would be -- refer to another brokerage firm. 18 Q. So this document -- which I don't represent 19 is complete. I just printed out a portion of it. 20 The column on the left represents another brokerage 21 firm and this lists all the transactions done on 22 December 11th, 1986 by your firm with 0158? 23 A. Let me just look at this. Yes. 24 MS. FEIN: It looks like there -- on 25 future pages there might be others.</p>

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<p>1 MS. CHAITMAN: Right, right. I just 2 wanted to clarify this. 3 MS. FEIN: Understood. 4 MS. CHAITMAN: Yeah. I didn't print out 5 complete. 6 THE WITNESS: These are the transactions 7 of the market making or proprietary trading side of 8 the firm. 9 Q. (By Ms. Chaitman) Okay. As a matter of 10 fact, Mr. Kratenstein just pointed out to me if you 11 look on page two there are other numbers in the 12 left-hand column. Do you see that? 13 A. Yes. You mean other ID numbers? 14 Q. Yes. 15 A. Yes. 16 Q. So that means -- I didn't notice that, so 17 this lists transactions with all the other firms and 18 they're identified by their code number? 19 A. That is correct. 20 Q. And were these all legitimate transactions? 21 A. Yes. 22 Q. And they were all executed? 23 A. Yes. 24 Q. Now, would -- as of December 11th, 1986 25 would this kind of report reflect 100 percent of the</p>	<p>1 you'd have to look at the trading ledger for the 2 firm. It depends upon also whether we did it as 3 principal or whether we did it as agent. Most of 4 our trades were done as principal. We're selling 5 out of our own inventory account to the customer. 6 I don't know exactly where that would 7 appear, but it would not appear -- these are what's 8 called street side transactions, as I said, mostly 9 from a market making proprietary trading side of the 10 firm, broker-to-broker trades. 11 Q. Okay. You had testified previously that 12 with respect to the convertible bond trading, 13 99 percent of it in the 1980s was done in the 14 over-the-counter market? 15 MS. FEIN: Objection. 16 Q. (By Ms. Chaitman) Do you recall that? 17 A. Depends upon the bond. The bonds, 18 convertible bonds traded -- most convertible bonds 19 traded in the over-the-counter market. Some of them 20 were traded on an exchange, but the great majority 21 of them would trade over the counter. 22 Q. Okay. Now, if I wanted to find a record on 23 any specific date in the 1980s of the volume and 24 specific transactions that you did in the 25 over-the-counter market, what document would I look</p>
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<p>1 trading activities of your firm or were there 2 other -- 3 A. No. 4 Q. Okay. So what other categories of 5 activities were there that are not reflected on a 6 report like this? 7 A. If we were trading with a client, you know, 8 out of our own inventory principal, it would not be 9 reflected on this -- on this report. 10 Q. Anything else? 11 A. I don't believe so. 12 Q. If you were doing convertible bond trading, 13 would that show up on this report -- 14 MS. FEIN: Objection. 15 Q. (By Ms. Chaitman) -- or would that be on a 16 different report? 17 A. I do not believe it would be on this 18 report. 19 Q. Do you recall that your firm generated 20 reports which -- in the 1980s which showed all of 21 the convertible bond purchases and sale on a daily 22 basis? 23 A. It would reflect, be reflected in a 24 customer's account if -- and it would be reflected 25 in the firm's account, in the firm's trading --</p>	<p>1 for? 2 A. You'd have to look at the firm trading 3 account records and blotters, but I don't -- and if 4 you're talking about period in the '80s, I doubt 5 whether or not you would be able to find them 6 because the record retention period was six years in 7 the industry. So there would be no reason the firm 8 would keep those. 9 Q. Now, Mr. Madoff, I believe you're aware 10 that there were microfilm records that the Trustee 11 found? 12 A. Yes. 13 Q. Do you recall how it came about that some 14 of your records were microfilmed? 15 A. It depends upon what the policy of the firm 16 was at that -- during that period of time. I mean, 17 there was a -- there was a lot of confusion within 18 the industry as to whether you had to microfilm 19 records or whether you would put them -- send the 20 records to a place like Stone Mountain, which was an 21 off premises places. 22 Everybody had a different policy, so -- and 23 I'm not particularly aware of what our firm's policy 24 was. It's not something I would be involved in. 25 Q. Okay. Was the decision to microfilm</p>

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<p style="text-align: right;">Page 511</p> <p>1 records your decision or did someone else in your 2 firm make that decision? 3 A. It wasn't my decision, no. 4 Q. It was not? 5 A. No. 6 Q. Okay. So is it fair to say that you didn't 7 instruct your staff as to what should be microfilmed 8 and what should not be microfilmed? 9 A. No. 10 Q. Did you ever seek to verify that documents 11 were being microfilmed? 12 A. Probably not. It's not an area that I 13 would be involved in. That would be something that 14 somebody in the systems department would make those 15 decisions or someone in the operations department. 16 Q. Okay. Can you think of anyone in 17 particular who would have been responsible for that? 18 A. It varied, you know, over the years. No. 19 Q. Okay. There was a person named Asha, 20 A-s-h-a. Do you recall that name? 21 A. No. 22 Q. Okay. Do you know you've testified 23 previously that the -- all of the trading that you 24 did except for the split strike was actual trading? 25 MS. FEIN: Objection to form.</p>	<p style="text-align: right;">Page 513</p> <p>1 to a client? 2 MS. FEIN: Objection. 3 THE WITNESS: No. 4 Q. (By Ms. Chaitman) Can you explain to me 5 why that was not illegal? 6 A. Short selling is a very common practice and 7 a significant part of the stock market, whether it 8 be an over-the-counter transaction or whether it be 9 an exchange-traded transaction. 10 That is -- as a matter of fact, there are 11 -- you can look at any one of the financial records 12 that are produced, you know, by the media and get 13 what the open short positions are in every 14 particular security. So the concept of selling 15 short has been in existence since the securities 16 started trading in the market maker. 17 Q. And the fact that you did that, that you 18 may have done naked short selling -- 19 A. Right. 20 Q. -- was that illegal or improper? 21 A. No. 22 Q. Okay. So is it fair to say that because 23 you were a market maker, you had not only the right 24 but also the obligation -- 25 A. That is correct.</p>
<p style="text-align: right;">Page 512</p> <p>1 MS. CHAITMAN: I'm just trying to lay the 2 background. 3 THE WITNESS: Yes. 4 Q. (By Ms. Chaitman) You testified to that 5 yesterday. Okay. 6 A. Up to a certain period of time. There were 7 actual trades done in split strike prior to 1990, 8 some period in the '90s. 9 Q. Okay, okay, okay. So just to clarify, when 10 you started the split strike for some period of time 11 you actually did the trades? 12 A. Correct. 13 Q. And at some point which you haven't been 14 able to specify you stopped doing the trades? 15 A. Correct. 16 Q. Okay. Now, I want to ask you something 17 about that, Mr. Madoff. Is it your understanding 18 from your experience in the securities business that 19 it was illegal for you to send a customer statement 20 to a customer which said in essence I've purchased 21 five shares of IBM for you when, in fact, you hadn't 22 actually made that purchase? 23 A. Was it what? 24 Q. Was there anything improper or illegal 25 about your in a sense selling a short, a naked short</p>	<p style="text-align: right;">Page 514</p> <p>1 MS. FEIN: Objection. 2 Q. (By Ms. Chaitman) -- to sell? 3 A. The rule was that if you were a registered 4 market maker, you were required to post on a regular 5 and continuous basis a two-sided market, meaning 6 what you're willing to buy and what you're willing 7 to sell. And in order to -- in order to continue to 8 be a registered market maker, you had to honor that 9 quote. Otherwise, it would be a violation of the 10 SEC. 11 Q. Okay. But you say it's not a violation of 12 any SEC rule to indicate on a customer statement 13 that the customer owns certain securities when you 14 hadn't actually purchased them? 15 A. Of course. 16 Q. It's not -- that's not improper? 17 A. No. 18 Q. Okay. So what was improper, if anything, 19 about the fact that with respect to the split 20 strike, at a certain point in time you stopped 21 buying the securities shown on the statements? 22 MS. FEIN: Objection. 23 THE WITNESS: What was improper was when 24 we reported our -- when we gave the SEC our 25 financial statements, you would have to show what</p>

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<p>1 your -- you wouldn't -- you wouldn't show whether 2 you were long or short for any particular customer. 3 That policy was changed many, many years ago, but 4 you had to reflect the liability of what was 5 involved in your total short positions. 6 Q. (By Ms. Chaitman) Okay. So just to be 7 clear, if you sent customer A a statement which 8 showed that he had a portfolio worth a million 9 dollars in various Fortune 100 company stocks and 10 you did not own those stocks at that time, you would 11 have had to reflect on your FOCUS report to the SEC 12 that you owed that customer a million dollars worth 13 of stocks? 14 MS. FEIN: Objection. Helen, we covered 15 this on the first day of Mr. Madoff's testimony back 16 in April. 17 MS. CHAITMAN: Okay. 18 MS. FEIN: So I just want to put on the 19 record that this is day one testimony. 20 MS. CHAITMAN: Okay. 21 THE WITNESS: You would -- if the firm was 22 short to a customer, you would reflect on -- you 23 would reflect -- that would reflect what your open 24 position was that's a short position; but if you had 25 an arbitrage transaction in that particular</p>	<p>1 deposition. 2 MS. CHAITMAN: Okay. You've made your 3 record. 4 THE WITNESS: No. 5 Q. (By Ms. Chaitman) So you're sure that 6 there was never a time from 1992 when you started 7 the split strike until 2008 when you were unable to 8 satisfy a customer demand for a redemption? 9 A. That's correct. 10 Q. Did you ever need to take in a new 11 customer's money in order to pay money to an 12 existing customer? 13 A. No. 14 Q. In the entire time you were in business? 15 A. Up until the collapse of the financial 16 market. 17 Q. Okay. Now, did you make margin loans to 18 some customers? 19 A. Yes. 20 Q. And were those margin loans in your view 21 debts from the customers to you? 22 A. Of course, yes. 23 Q. And why is that? Tell us what a margin 24 loan is. 25 A. Margin loan is regulations set by the</p>
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<p>1 security, you would net the long positions versus 2 the short position of the firm, both the market 3 making, proprietary and the customer transaction. 4 Plus, you would have to take options into 5 consideration. You'd have to -- there were certain 6 exemptions and instructions of how you treated your 7 capital. 8 Q. (By Ms. Chaitman) Okay. But, in fact, you 9 never disclosed to the SEC that you had naked short 10 positions. Is that fair to say? 11 A. During the period where we didn't sell the 12 stock, that is correct. 13 Q. Where you didn't buy the stock you mean? 14 A. Didn't buy the stock. 15 Q. Okay, okay. And in your mind is that what 16 was illegal about what you did? 17 A. Correct. 18 Q. Okay. Now, in all the years you were in 19 business prior to the global economic collapse in 20 2008, did you ever find yourself unable to satisfy a 21 customer demand for a withdrawal from a -- 22 MS. FEIN: Objection. This is not only -- 23 it's outside the scope of the day two deposition. 24 We didn't enter the order today, but this was all -- 25 these were things that were covered on the day one</p>	<p>1 Federal Reserve. If a customer wants to buy -- 2 wants to buy securities, he is allowed to pledge, 3 you know, other securities in his account, you know, 4 to purchase it. So the margin rates varied. I 5 believe in the period of time that you're talking 6 about it would be 50 percent, but again, it depends 7 upon the securities, whether they were bond, whether 8 they were -- you know, the type of bond, whether or 9 not they had options involved with it. 10 It was a complicated practice, but 11 basically it was the customer's ability to borrow to 12 be able to purchase more securities without posting 13 cash for that particular transaction. So he was -- 14 it's similar to when you have a house and you take a 15 mortgage loan out to buy the house or to expand the 16 house. Well, use it for whatever you want. Those 17 regulations are set by the Federal Reserve Board. 18 Q. Okay. And would you have made a margin 19 loan to someone who didn't own any securities? 20 A. No. 21 Q. So is it fair to say that almost by 22 definition if you made a margin loan to a customer, 23 that customer had real securities in his account? 24 MS. FEIN: Objection. 25 THE WITNESS: Yes.</p>

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<p>1 Q. (By Ms. Chaitman) And do you recall that 2 you made substantial margin loans to the Sages? 3 A. That I can't recall. 4 Q. Okay. But it would be reflected on their 5 statements; wouldn't it? 6 A. You could figure it out from the statement, 7 yes. You'd see by whether it had a debit balance in 8 their account -- 9 Q. Okay. 10 A. -- past the settlement date of the 11 transaction. 12 Q. Okay. And was it your practice to insist 13 that margin loans be repaid by customers? 14 A. Yes. 15 MS. CHAITMAN: I have nothing further. 16 Thank you very much, Mr. Madoff. 17 MS. FEIN: Okay. We can get started if 18 that's okay with you. Would you prefer that we take 19 a break now? 20 THE WITNESS: No, no. I'm fine. 21 MS. FEIN: Okay. 22 MR. GOLDMAN: You want something to drink? 23 THE WITNESS: Anything, water or Pepsi is 24 fine. 25 MR. GOLDMAN: You want water or Pepsi?</p>	<p>1 that term today as well? 2 A. Yes. 3 Q. For the period of time where your 4 customers' statements showed trades that where the 5 underlying securities weren't purchased, what term 6 would you refer to those as? 7 A. Basically, short. 8 Q. Okay. Would you agree that can we say that 9 the statements at least were fake statements? They 10 showed transactions that didn't occur? 11 A. Well, depends upon -- I have to think 12 about, you know, how you would define that. In 13 other words, because selling short is -- is not 14 considered a legitimate trade or a trade that was 15 not real, in other words, let me just for the record 16 make sure that you understand that when a brokerage 17 firm sells short, all right, that is no different 18 than a broker selling stock long as to whether or 19 not it's legal. 20 In other words, that is -- it's a valid 21 transaction. I noticed in the GA -- in the expert 22 witness, I guess it would have been referred to as 23 the Dubinsky report and in the Trustee's reports 24 that I have seen, they consistently refer to short 25 sales as fake or illegitimate transactions.</p>
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<p>1 THE WITNESS: Pepsi. 2 MS. CHAITMAN: Do you need a dollar? 3 MR. GOLDMAN: No. 4 EXAMINATION 5 BY MS. FEIN: 6 Q. Good morning, Mr. Madoff. 7 A. Good morning. 8 Q. When -- I want to define a couple of terms 9 up front so when we talk about them later, you know 10 what I'm referring to; but if I ask a question about 11 the IA business or house 17, would you agree that 12 that's referring to your investment advisory 13 business? 14 A. Yes. 15 Q. And if I ask a question about market making 16 or proprietary trading or house five, I might use 17 those terms somewhat interchangeably. I might use 18 house five to refer to the market marking and 19 proprietary trading business, but do you agree that 20 we can use those terms? 21 A. Yes. 22 Q. And yesterday I believe Mr. Kratenstein 23 asked for clarification about what -- at my request, 24 so thank you, about what a real trade was and you 25 had -- and we have that term defined. We can use</p>	<p>1 Anybody in the industry would not 2 understand using that terminology because if you 3 sell -- if you make a short sale through a brokerage 4 firm, the brokerage firm is under the same 5 obligation to deliver those securities to you if you 6 request them as long and you have -- and you have 7 the same obligation to pay for those securities. 8 There is no difference between whether the 9 transaction was actually purchased or not. If the 10 broker said that he sold you the stock, whether he's 11 long or short does not affect his obligation, does 12 not alter his obligation to honor that transaction 13 upon your request. 14 So you can't say -- otherwise, if you ever 15 had -- went into court with that and said this is a 16 fake transaction, this is a real transaction, they 17 would not know what you're talking about. 18 Q. I understand. We spoke yesterday a bit and 19 we're going to talk about it today as well that 20 there are amounts listed on customer statements 21 where you hadn't purchased the amounts that are 22 listed -- 23 A. Correct. 24 Q. -- correct? So and that would be I believe 25 it's your testimony after 1992 that you would have</p>

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<p style="text-align: right;">Page 523</p> <p>1 customer statements that showed transactions that 2 didn't have the underlying securities purchased by 3 your firm; correct? 4 A. We would show short positions on a customer 5 statement at any time, you know, that it took place, 6 even if it was before 1992 because that's a -- 7 there's no brokerage firm that does a market making 8 or proprietary trading. Well, there's no -- let me 9 clarify that. 10 There is not a brokerage firm in existence 11 probably that sells stock short to a customer from 12 his principal account if he's, in fact, maintaining 13 a market making or proprietary trading account. So 14 I know -- I'm not sure if I'm confusing you or not, 15 but it is a perfectly legal -- a short sale or a 16 naked short sale, which by definition is the same 17 thing, is a perfectly legal transaction. 18 So I could sell stock short. As a matter 19 of fact, and I probably shouldn't go into all this. 20 I don't know, but during my proffer agreement, my 21 proffer session, the prosecutor in the presence of 22 the SEC and the Trustee asked me to explain my 23 market making business or my business in general. 24 And during that period of time he asked me whether 25 or not we ever sold stock to a customer short.</p>	<p style="text-align: right;">Page 525</p> <p>1 2007. Do you see that? 2 A. Yes. 3 Q. This customer statement -- if you turn to 4 the third page of the document, the Bates number is 5 960. Do you see that page? 6 A. Yes. 7 Q. This customer statement shows the purchase 8 of U.S. treasuries on December 31st. Do you see 9 that transaction? 10 A. Yes. 11 Q. You previously testified that the 12 individual transactions shown on customer statements 13 like these weren't always -- I understand your 14 position with respect to shorts, but if we went to 15 where you held Treasury bills for this period or 16 went to where you held the securities for the period 17 shown on these statements, we wouldn't necessarily 18 be able to find those securities at the DTC. 19 We wouldn't necessarily be able to find 20 those treasuries held at a depository or a 21 third-party firm; correct? 22 MS. CHAITMAN: Objection to form. 23 THE WITNESS: If I said on treasuries, we 24 never went short treasuries. So if, in fact, you 25 went to locate them, you would find them.</p>
<p style="text-align: right;">Page 524</p> <p>1 And I said, of course, there was periods of 2 time where we sold stock short to a customer. And 3 he didn't seem to understand that. As a matter of 4 fact, I had turned to the SEC people that were there 5 and my own lawyer and said please explain to him, 6 you know, how the market making worked, that they 7 were sort of shocked. 8 I can understand the prosecutor not 9 understanding that, certainly not a prosecutor that 10 was handling a securities case. So I don't know 11 whether he was going through some exercise or not, 12 but that's how -- they seemed to be focusing in on 13 whether or not we ever sold short. I said if you're 14 a market maker, you had to sell short at times. I 15 don't know if I've clarified that or not. 16 (Trustee's Exhibit Number 10 was marked 17 for identification.) 18 Q. (By Ms. Fein) I'll try -- I'm going to try 19 a different way. So I'm handing you what's been 20 marked as Trustee's Exhibit 10. And -- 21 MS. CHAITMAN: Thank you. 22 Q. (By Ms. Fein) -- this appears to be a 23 customer statement. Would you agree? 24 A. Yes. 25 Q. And it appears to be dated December 31st,</p>	<p style="text-align: right;">Page 526</p> <p>1 Q. (By Ms. Fein) So for the treasuries shown 2 on your customer statements, you've told us in the 3 past that you did not have -- the amount of 4 treasuries you said you purchased was between 5 two-and-a-half and \$6 billion. Do you remember 6 that? 7 A. Depends upon the period of time. 8 Q. Right. You said over any period of time, 9 two-and-a-half to \$6 billion was the amount of 10 treasuries that you would have had on hand. Do you 11 remember that? 12 MS. CHAITMAN: I think you're misstating 13 his testimony, but it stands. Bernie, you testify 14 as to what you believe -- 15 MS. FEIN: What you understood. 16 MS. CHAITMAN: -- not what -- 17 THE WITNESS: During this period of time 18 if we said that we had -- if a Treasury transaction 19 was in a client's account, that transaction was -- 20 that transaction was actually bought or it was held, 21 the equivalent amount, at a third-party depository, 22 which would be DTC or another brokerage firm like a 23 Morgan Stanley or a Fidelity and so on. 24 Q. (By Ms. Fein) So the same -- you're saying 25 that this same -- the same Treasury bill, the same</p>

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<p>1 due date, the same CUSIP number, the same amount, 2 that that information would appear on a third-party 3 financial statement or a DTC record? 4 A. Right, correct. 5 Q. So for the period of time that this 6 Exhibit 10 refers to -- 7 A. Uh-huh. 8 Q. -- December 2007, your customer statements 9 showed \$56 billion in treasuries aggregated? 10 A. 56 billion dollars? 11 Q. Yes, your customer statements. 12 A. During what period of time? 13 Q. December 2007 when this statement -- 14 A. Oh, this is 2007. 15 Q. Yes. 16 A. I thought you were looking at an '87 date. 17 Q. I see. Okay. So is your testimony 18 somewhat different since this is a 2007 statement? 19 A. Yes, yes, right. 20 Q. Okay. So in the 2007 time frame would you 21 say -- I mean, did you have \$56 billion of 22 treasuries in 2007? 23 A. No. 24 Q. And the treasuries that would be shown on 25 your individual statements that aggregate to the 56</p>	<p>1 rephrase the question. 2 THE WITNESS: Yes. 3 Q. (By Ms. Fein) Thank you. Would a firm 4 that had -- did not have the back office capability 5 to receive and deliver securities need to rely on a 6 third-party clearing firm like Merrill Lynch or Bear 7 Stearns? 8 A. Correct. 9 Q. For this firm that uses a third-party 10 clearing firm, there were brokerage firms that acted 11 this way; right? 12 A. Correct. 13 Q. And would that brokerage firm basically use 14 Bear Stearns or Merrill Lynch as a back office to 15 receive and deliver the securities? 16 A. Correct. 17 MS. CHAITMAN: Objection to form. 18 Q. (By Ms. Fein) If the trades were cleared 19 through a third-party clearing firm, would that firm 20 issue statements to -- to the statements of the 21 holders of those underlying securities? 22 MS. CHAITMAN: Objection to form. I don't 23 know what time period you're questioning him about. 24 He's testified that the practice has varied through 25 the decades. Can you just give him a time period?</p>
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<p>1 billion, those amounts wouldn't be something that 2 your firm held; correct? 3 A. Not in 2007, no. 4 Q. Understood. 5 A. I've taught you -- we were on the last 6 date, which was '87. 7 Q. Got it. I'm glad you clarified so we're on 8 the same page. 9 A. All right. 10 Q. Let's see. I wanted to ask -- we've 11 discussed a bit about clearing firms in the past 12 couple of days. The BLMIS back office had the 13 capability to receive and deliver securities; right? 14 A. Yes. 15 Q. And is that -- and you refer to BLMIS as a 16 self-clearing firm for that reason? 17 A. Correct. 18 Q. If you were a firm that did not have that 19 back office capability, would you rely on a 20 third-party clearing firm to clear your 21 transactions? 22 MS. CHAITMAN: Objection to form. 23 THE WITNESS: Yes. Would I or would 24 someone in general? 25 MS. FEIN: Thank you. I'm going to</p>	<p>1 Q. (By Ms. Fein) Understood, yes. Did the 2 practice of back office operations of receiving and 3 delivering securities change over time? 4 A. Yes. 5 Q. Was one part of that change that DTC and 6 other depositories were available after a certain 7 period? 8 A. Correct. 9 Q. Would you say that would -- the time period 10 where depositories were available was sometime in 11 the '70s or '80s? 12 A. No. 13 Q. What time frame do you recall? 14 A. Well, I don't -- well, there was -- there 15 were always clearing firms like a Bear Stearns that 16 would -- that would operate during the period of 17 time you're talking about, but DTC came into 18 existence later. So did National Securities 19 Clearing Corporation come into existence later. It 20 would be sometime probably in the '80s. 21 Q. Okay. I believe we looked at a document 22 with Ms. Chaitman from 1986 that had National 23 Securities Clearing Corp on it. Is that date -- 24 A. Then that would probably be, you know, when 25 National Securities Clearing Corporation existed was</p>

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<p>1 in operations.</p> <p>2 Q. Do you recall was the DTC also in operation</p> <p>3 around that time?</p> <p>4 A. It came in after. I don't know exactly</p> <p>5 what the date was, but National Securities Clearing</p> <p>6 Corporation was not a depository.</p> <p>7 Q. Understood.</p> <p>8 A. It just cleared the transactions.</p> <p>9 Q. Okay. So the difference between -- so DTC</p> <p>10 would -- was a depository in that it held the</p> <p>11 securities?</p> <p>12 A. Yes.</p> <p>13 MS. CHAITMAN: It helped them?</p> <p>14 MS. FEIN: Held.</p> <p>15 THE WITNESS: It depends upon the</p> <p>16 security, whether it was a bond or not, and also it</p> <p>17 depends upon you if you had a clearing arrangement</p> <p>18 with a bank or another brokerage firm, even after</p> <p>19 the clearing corporation or DTC came into existence</p> <p>20 you might use any one of the other clearing firms.</p> <p>21 Q. (By Ms. Fein) Understood. But BLMIS</p> <p>22 didn't need to use -- strike that. Typically</p> <p>23 because BLMIS was a self-clearing firm for every day</p> <p>24 transactions, it wouldn't rely on a third-party</p> <p>25 clearing firm; correct?</p>	<p>1 why you would hold a security at DTC or elsewhere</p> <p>2 other than the fact that DTC didn't clear a certain</p> <p>3 security or couldn't hold a certain security for</p> <p>4 you, like treasuries?</p> <p>5 A. It depends upon who the securities -- who</p> <p>6 the contra-side of the securities we bought or sold,</p> <p>7 depending upon what brokerage firm we were dealing</p> <p>8 with. It depends upon the type of security and that</p> <p>9 we were dealing with it, what we planned to do with</p> <p>10 the security, in other words, whether we would be a</p> <p>11 long-term holder of the security, whether there was</p> <p>12 a customer involved in the transaction.</p> <p>13 There's any number of reasons why we would</p> <p>14 do a -- the same reason -- there was different</p> <p>15 reasons why we buy and sell through different</p> <p>16 brokerage firms and, for example, also depends upon</p> <p>17 where that firm is located.</p> <p>18 So, for example, if we're dealing with a</p> <p>19 firm in Chicago, we would use a different clearing</p> <p>20 facility, whether it be a bank or a firm that's</p> <p>21 located in Chicago because -- and then, again, it</p> <p>22 depends upon the period of time whether people are</p> <p>23 using physical securities or they were not using</p> <p>24 physical securities. In other words, there were --</p> <p>25 you know, some customers wanted to take possession</p>
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<p>1 MS. CHAITMAN: Objection to form.</p> <p>2 THE WITNESS: No. That's not correct.</p> <p>3 Q. (By Ms. Chaitman) Okay. Please tell me.</p> <p>4 A. In other words, it depends upon -- we had</p> <p>5 arrangements as most brokerage firms would have</p> <p>6 arrangements, particularly market making firms, with</p> <p>7 all sorts of clearing firms, whether it be a Bear</p> <p>8 Stearns, a Goldman Sachs or whether it be a bank,</p> <p>9 any number of banks that clear or they would clear</p> <p>10 themselves.</p> <p>11 And depending upon the type of transaction</p> <p>12 that they were doing, for example, if it was a</p> <p>13 Treasury bill transaction, only certain brokerage</p> <p>14 firms are registered to deal in treasuries.</p> <p>15 So you would have to use like a Bank of New</p> <p>16 York, for example, one or a Goldman Sachs and so on.</p> <p>17 So there is no general rule as to -- and it also</p> <p>18 depends upon how you were dealing with that other</p> <p>19 firm and what you in general do business with that</p> <p>20 other firm. I don't know if I'm confusing a little,</p> <p>21 but it varies.</p> <p>22 Q. If you -- you held securities at DTC;</p> <p>23 correct?</p> <p>24 A. Some securities, yes.</p> <p>25 Q. If -- and what was the difference between</p>	<p>1 of securities. The industry, you know, is trying to</p> <p>2 eliminate the movement of securities back and forth.</p> <p>3 And it depends upon how the security was being paid</p> <p>4 and whether this contra-party had the ability to</p> <p>5 pay.</p> <p>6 Some, for example, customer transactions,</p> <p>7 they would want you to deliver the securities to</p> <p>8 them or to a clearing agent against payment. Other</p> <p>9 customers had the money in their account. So</p> <p>10 there's any number of -- look, I was the chairman of</p> <p>11 a clearing corporation, you know, and was the</p> <p>12 founder of a clearing corporation, so I'm maybe more</p> <p>13 familiar with this than the average person is.</p> <p>14 I hope I'm not confusing you, but there's</p> <p>15 any number of reasons why a transaction gets cleared</p> <p>16 in one form or another.</p> <p>17 Q. Okay.</p> <p>18 A. If it makes you feel any better, Dubinsky</p> <p>19 has no clue either.</p> <p>20 Q. Thank you. We're trying to figure it out.</p> <p>21 I'm trying to figure it out.</p> <p>22 A. It's difficult. I understand. I'm not --</p> <p>23 Q. Thank you. I want to look at some</p> <p>24 documents with you that maybe will help. I think we</p> <p>25 want to make sure we're getting it right. I do.</p>

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<p>1 A. That's fine.</p> <p>2 Q. So let me show you a document. You've said</p> <p>3 in the past you kept stock records; correct?</p> <p>4 A. Correct.</p> <p>5 Q. And the stock records would show where the</p> <p>6 securities were held; correct?</p> <p>7 A. Correct.</p> <p>8 Q. We're going to take a look at one now. The</p> <p>9 stock records would also show your inventory for</p> <p>10 your long and short positions; right?</p> <p>11 A. Correct.</p> <p>12 (Trustee's Exhibit Number 11 was marked</p> <p>13 for identification.)</p> <p>14 MR. KRATENSTEIN: This is 11?</p> <p>15 Q. (By Ms. Fein) So what you're looking at is</p> <p>16 Trustee 11. And I want to go through some of these</p> <p>17 column headings with you.</p> <p>18 A. Uh-huh.</p> <p>19 Q. Are you familiar with this document?</p> <p>20 A. Yes.</p> <p>21 Q. Is this the type of document that you would</p> <p>22 have prepared around the date listed, which is</p> <p>23 July 16th, 1987?</p> <p>24 A. Yes.</p> <p>25 Q. Would this have been prepared in your</p>	<p>1 A. Correct.</p> <p>2 Q. The next column, transfer STRT. Start</p> <p>3 maybe, do you think?</p> <p>4 A. I don't know whether that's start or</p> <p>5 street. I don't know whether --</p> <p>6 Q. Okay. And then looks like transfer owner</p> <p>7 in the next line?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. If you go over a couple of columns</p> <p>10 do you see securities/account name --</p> <p>11 A. Yes.</p> <p>12 Q. -- in the middle of the page?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Okay. And then next to that what I think</p> <p>15 is previous balance?</p> <p>16 A. Correct.</p> <p>17 Q. Current long/short?</p> <p>18 A. Correct.</p> <p>19 Q. New balance and account number, do you see</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. So looking at this first transaction, the</p> <p>23 security name is AMR Corp?</p> <p>24 A. Uh-huh.</p> <p>25 Q. And the trader says Peter, dash, trading?</p>
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<p>1 ordinary course of business?</p> <p>2 A. Would this what?</p> <p>3 Q. Have been prepared in your ordinary course</p> <p>4 of business?</p> <p>5 A. Yes.</p> <p>6 Q. The title reads house five daily stock</p> <p>7 record activity --</p> <p>8 A. Correct.</p> <p>9 Q. -- for -- thank you -- July 16th, 1987?</p> <p>10 A. Yes.</p> <p>11 Q. If you look at the columns below --</p> <p>12 MS. CHAITMAN: I'm sorry. Where does it</p> <p>13 say that?</p> <p>14 MS. FEIN: The first line on the top.</p> <p>15 MS. CHAITMAN: Oh, I see. Okay.</p> <p>16 Q. (By Ms. Fein) Do you see the first column</p> <p>17 on the left, last act, is that last activity?</p> <p>18 A. Yes.</p> <p>19 Q. The column directly right next to that,</p> <p>20 safekeeping?</p> <p>21 A. Safekeeping, right.</p> <p>22 Q. And what's under that, STRT? Do you know</p> <p>23 what that refers to?</p> <p>24 A. No.</p> <p>25 Q. Okay. The next one, safekeeping owner?</p>	<p>1 A. Correct.</p> <p>2 Q. In the previous balance column do you see</p> <p>3 an amount, 2,307 L?</p> <p>4 A. Okay.</p> <p>5 Q. Do you think that would be 2,307 long?</p> <p>6 A. Correct.</p> <p>7 Q. And then if you keep going across it looks</p> <p>8 like there was some activity on this date. Do you</p> <p>9 agree?</p> <p>10 A. Yes.</p> <p>11 Q. In the long and short position?</p> <p>12 A. Uh-huh.</p> <p>13 Q. And the new balance --</p> <p>14 A. Yes.</p> <p>15 Q. -- is 3,157 long. Do you see that?</p> <p>16 A. Yep.</p> <p>17 Q. So looking at this trade, can we just go</p> <p>18 underneath where it says AMR Corp and Peter trading?</p> <p>19 The next line, Prudential Bach Sec, Inc.?</p> <p>20 A. Correct.</p> <p>21 Q. Do you know what that refers to?</p> <p>22 A. Prudential Bache Securities. That's</p> <p>23 another brokerage firm.</p> <p>24 Q. Okay. And do you see below that SIAC?</p> <p>25 A. Correct.</p>

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<p>1 Q. What does that refer to on this report?</p> <p>2 A. Securities Industry Automation Corp.</p> <p>3 That's -- they keep the clearing records. It's an</p> <p>4 automated system.</p> <p>5 Q. Okay. So at this -- for this date,</p> <p>6 July 1987, this automated records system was in</p> <p>7 place based on this report; right?</p> <p>8 A. Correct.</p> <p>9 Q. And the line below that looks like DTC?</p> <p>10 A. Yes.</p> <p>11 Q. Do you see in the previous balance column</p> <p>12 the 2,307 long, if you go down to DTC it has 2,307</p> <p>13 S. Would that be 2,307 short? I can show you.</p> <p>14 A. Okay, yes.</p> <p>15 Q. Do you agree that's the -- that appears to</p> <p>16 be the same holding in that 2,307 long is your</p> <p>17 firm's balance and the DTC is holding that security.</p> <p>18 That's what's reflected in 2,307 short?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And then the new balance column, I</p> <p>21 think you'll see the same thing somewhat. It</p> <p>22 appears there's a total of 3,357 long at the end of</p> <p>23 the day?</p> <p>24 A. Uh-huh.</p> <p>25 Q. And DTC is holding 3,357 short. Do you see</p>	<p>1 inventory here. These are not inventory</p> <p>2 transactions. These are the market making, the</p> <p>3 market makers' transactions.</p> <p>4 Q. Okay. You told us the stock records would</p> <p>5 show the inventory of long and short positions for a</p> <p>6 certain time; right?</p> <p>7 A. Of market makers.</p> <p>8 Q. So let's go back then. Because of the</p> <p>9 inventory documents that you kept, why don't you</p> <p>10 talk about the other documents that would show your</p> <p>11 trading inventory?</p> <p>12 A. Well, you should be able to -- if you --</p> <p>13 you should be able to find an account that showed</p> <p>14 the inventory in the trading account, you know, in</p> <p>15 the market making account, in -- not market -- the</p> <p>16 investment account. Do you have records that show</p> <p>17 whether the investment account was long or short?</p> <p>18 Q. I'm not sure what you're referring to when</p> <p>19 you say investment account. Can you give me more</p> <p>20 information about it?</p> <p>21 A. For example, that would be the firm itself.</p> <p>22 There's not a market maker assigned to that account.</p> <p>23 Q. Okay. So for --</p> <p>24 A. And there are other -- there are individual</p> <p>25 trading accounts. This is -- from looking at this</p>
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<p>1 that?</p> <p>2 A. Yep.</p> <p>3 Q. So if on this date, July 16th, 1987, you</p> <p>4 had -- does this show that your firm would have an</p> <p>5 inventory of 3,357 shares of AMR Corp?</p> <p>6 A. I'm a little bit confused myself with this</p> <p>7 because this is not a record that, you know, I would</p> <p>8 work with typically. I don't know whether this is a</p> <p>9 complete record. This is -- it seems to be</p> <p>10 reflecting the market making department, their</p> <p>11 trades. So does this show -- this looks like the</p> <p>12 market -- all the market making trades.</p> <p>13 Q. Okay.</p> <p>14 A. Because I did -- these people, Peter,</p> <p>15 Martin Joel, Mark, those -- it's identifying trading</p> <p>16 that took place in the market making. I don't see</p> <p>17 any customer transactions on here.</p> <p>18 Q. Okay. The customer transactions, your</p> <p>19 testimony is the customer transactions would come</p> <p>20 out of your inventory; right?</p> <p>21 A. Yeah, but this is -- not out of the -- I</p> <p>22 don't see the investment. That would be the</p> <p>23 investment account, not the market making account.</p> <p>24 This house five account is the market making</p> <p>25 account. So we also have a -- you know, an</p>	<p>1 record here, it's showing particularly market</p> <p>2 makers. You see it's identified. I don't see a</p> <p>3 record that shows what the investment account is.</p> <p>4 You'd also have to look at -- you'd also have to</p> <p>5 have something that would reflect option trading and</p> <p>6 convertible bond trading if, in fact, there was a</p> <p>7 convertible bond transaction.</p> <p>8 Q. Do you see the entry for America West</p> <p>9 Airlines about one, two, three, four, five down?</p> <p>10 A. Yes. That's a bond, right.</p> <p>11 Q. Okay. A convertible bond; right?</p> <p>12 A. Right.</p> <p>13 Q. And the traders listed here would be</p> <p>14 trading in your house five business; right?</p> <p>15 A. Correct.</p> <p>16 Q. It doesn't -- this report doesn't show the</p> <p>17 activity of a single trader. It shows multiple</p> <p>18 traders; right?</p> <p>19 A. If there was a -- if there were multiple</p> <p>20 traders, it's in here. And then this AMR shows --</p> <p>21 where is it again? Peter.</p> <p>22 Q. Okay.</p> <p>23 A. That would be my brother.</p> <p>24 Q. Okay. And then if you look to the aluminum</p> <p>25 company transaction, which is four down?</p>

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<p style="text-align: right;">Page 543</p> <p>1 A. Martin Joel, right. 2 Q. That's another trader in your firm? 3 A. Yes, uh-huh. 4 Q. And the one below that, Mark, dash, 5 trading, would that be another trader in your firm? 6 A. Yes. 7 Q. And you see a few lines down closer to the 8 end of the page David, dash, trading? 9 A. Correct. 10 Q. And Margaret, dash, trading? 11 A. Correct. Those are all market makers. 12 Q. Okay. And did those traders also trade for 13 your proprietary account as well? 14 A. Sometimes. Sometimes I would trade for the 15 investment account. 16 Q. Okay. So this report shows your -- it 17 shows more than one trader trading on the same day 18 in a variety of securities; right? 19 A. Correct. 20 Q. And it shows that there's a previous 21 balance in the security and a new balance. So it is 22 showing that there are some held positions. It's 23 not just reflecting the daily activity. It's 24 reflecting the activity before that date as well and 25 then it has a previous balance column?</p>	<p style="text-align: right;">Page 545</p> <p>1 A. In that particular trading trader's 2 account. 3 Q. But these -- these aren't listed by trader. 4 They're listed by security; right? 5 A. I know, but if I did -- for example, if I 6 traded in Allied for the firm's investment account 7 for not a market maker's account, you know, that 8 would not be reflected here. This is looking at -- 9 at what the trades were before and after in a 10 particular trader's account. 11 If there is no -- so if you look at any one 12 of these transactions, you know, you would have to 13 also find a stock record that reflected the -- that 14 reflected these other traders' securities or the 15 firm's investment account. 16 Q. Okay. So my understanding was because if 17 you look next to Peter's name, there's a date? 18 A. Right. 19 Q. And the date is July 16th, 1987? 20 A. Right. That would be the last activity 21 that that trader traded the security. 22 Q. But why would it be any different? Why 23 couldn't it be that other traders had traded that 24 same security on a prior date? This is just showing 25 that that's the last trader that traded in it;</p>
<p style="text-align: right;">Page 544</p> <p>1 A. In that, for that particular trader. It's 2 not showing the global position for the firm. 3 Q. Well, the trader that's listed as the last 4 activity trader, the trader on this day -- 5 A. Correct. 6 Q. -- it doesn't mean -- you wouldn't say that 7 this report means that the trader listed as the only 8 trader in that security; right? 9 MS. CHAITMAN: Objection to form. 10 THE WITNESS: In other words, we had in 11 some securities there could be multiple traders, you 12 know, trading it. So and those, those names would 13 be there also. For example, you would see Martin 14 Joel and there could be Peter and so on. 15 Here, for example, you see if you go down 16 to American Express, you see Peter for trading and 17 then there's Prudential Bache. You know, that's 18 another -- another street side transaction. I don't 19 know -- I don't know how to explain. 20 Q. (By Ms. Chaitman) No, no. I think here's 21 where we're misunderstanding each other. 22 A. Right, okay. 23 Q. There's a previous balance column that's 24 here, which means that there's a held position 25 before this daily activity starts; right?</p>	<p style="text-align: right;">Page 546</p> <p>1 right? 2 A. I'm not really sure. I don't know. I 3 don't know what you're trying to -- I don't know 4 what you're trying to identify. 5 Q. Okay. Well, I'm trying to identify where 6 your securities are held and this report shows -- 7 A. That I understand, but -- 8 Q. Okay. 9 A. -- I don't know, you know, if you -- I 10 don't know if these are all the records that reflect 11 what you're trying to do. In other words, you'd 12 have to -- do you have -- have you been able to find 13 records for the investment account, you know, and 14 other stock record? 15 This is not necessarily just all the -- 16 just all the trading that took place in the firm 17 itself. I don't see where you would be able to 18 identify that. 19 Q. Okay. Well, that's why we're asking you. 20 A. I don't know. 21 Q. Because this is a stock record and you told 22 us that stock records showed where securities were 23 held, we thought that the stock records that we had 24 would show where those securities were held, but -- 25 A. If you have all the stock records.</p>

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<p style="text-align: right;">Page 547</p> <p>1 Q. Okay. But, I mean, you're referring to 2 something different, which is something for an 3 investment account. I'm not sure I understand what 4 that document would look like. 5 A. It would look -- it would be the same as 6 this. 7 Q. So even though this shows your market 8 making activity, you're saying that there's another 9 document that would show something else? Are you 10 saying that -- what would be on that document? 11 Would it have trader names? 12 A. It would say investment account and it 13 might have my name on it or someone else's name on 14 it, probably -- I did most of the trading for the 15 investment account. 16 Q. Okay. 17 A. It could have my brother's name on it. 18 Q. Okay. But this has your brother's name on 19 it; right? 20 A. In his capacity as a market maker. He 21 traded as a market maker and he also traded for the 22 firm's investment account. 23 Q. Is that the same as proprietary trading? 24 A. Correct. 25 Q. Okay. So it's your position that you'd</p>	<p style="text-align: right;">Page 549</p> <p>1 In other words, I could -- I do a trade, 2 the firm could do a transaction in AMR and we could 3 have it in three different locations depending upon 4 who we bought the security, bought and sold the 5 security for and whether the trade was cleared 6 in-house or whether it was cleared through another 7 -- through another -- another brokerage firm. And, 8 you know, you can't -- there's no general rule. 9 Q. So you're saying there isn't a document 10 that would show -- 11 A. Yeah. There are documents that would show 12 that but, you know, it wouldn't necessarily -- for 13 example, if we had it at another brokerage firm, you 14 know, there would be a document that would show 15 that, you know, it's at that particular firm. You 16 have to -- you'd have to -- you'd have to present to 17 me -- and I can't tell you what all these records -- 18 whether you have a complete set of records there. 19 Q. So will you turn ahead to page ending in 20 950? It's the same document. It's about -- I'm 21 sorry. Ending in 954, so it's four pages in. 22 MR. KRATENSTEIN: I just realized 23 something. 24 MS. CHAITMAN: It has 950 on every page. 25 MR. KRATENSTEIN: All of our copies appear</p>
<p style="text-align: right;">Page 548</p> <p>1 have a different house five report for market making 2 activity than you would for other legitimate 3 activity that was also going on at your firm on the 4 same day, same time? 5 A. House five typically refers to the market 6 making activity. I don't know what the -- I don't 7 really know the answer to that, how you would 8 identify that. 9 Q. Well, when we spoke earlier today -- 10 A. Understand that I'm not from the back 11 office, so I don't -- I understand the global 12 concept of what we do; but as far as working records 13 or how our firm kept certain records, that's not 14 something -- I'm not a -- wasn't a clerk. 15 Q. Okay. So you agree that this report shows 16 that positions were held at DTC; right? 17 A. It shows the position that -- it shows what 18 is held at -- if it says -- if it says that it was 19 held at DTC, then the security was held at DTC for 20 this particular transaction, this particular 21 account. If we had a trading inventory in the same 22 -- if we had a position in the same security, it 23 might be held through another broker. It might be 24 held at Morgan Stanley. It might be held through 25 one of our clearing banks.</p>	<p style="text-align: right;">Page 550</p> <p>1 to have 950. 2 MS. FEIN: You know, there are two numbers 3 listed. 4 MR. KRATENSTEIN: Oh, you're looking at 5 the top number. 6 MS. FEIN: So I'm referring to the number 7 that's changing, yes. 8 MR. KRATENSTEIN: So what number are you 9 on? 10 MS. CHAITMAN: 954. 11 MS. FEIN: 954. 12 MR. KRATENSTEIN: Thank you. Sorry. 13 THE WITNESS: What am I looking at now? 14 Q. (By Ms. Fein) So there's a transaction for 15 Continental Investment it looks like Corp Mass in 16 the middle of the page? 17 A. What page am I on? 18 Q. 954. I'll show you. Do you see that? 19 A. Yes. 20 Q. This has it looks like 100 long is the 21 balance, the new balance, and on the other side of 22 the transaction it doesn't say DTC. It says 23 Shearson Lehman Brothers, Inc. Do you see that? 24 A. Correct. 25 Q. Would that be another place that you held</p>

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<p>1 securities at this time?</p> <p>2 A. Could be.</p> <p>3 Q. Okay. So this report doesn't just show DTC</p> <p>4 activity. It shows other places where securities</p> <p>5 are held beyond DTC; right?</p> <p>6 A. I can't tell from this.</p> <p>7 Q. Well, is this transaction, this Lehman</p> <p>8 Brothers transaction showing that Lehman Brothers is</p> <p>9 holding the 100 shares for you?</p> <p>10 A. I'm not sure whether this is -- whether</p> <p>11 Lehman -- this looks like we bought the stock from</p> <p>12 Lehman, the other side.</p> <p>13 Q. So the counterparty?</p> <p>14 A. Would be the counterparty, I believe.</p> <p>15 That's what it looks like to me.</p> <p>16 Q. Okay. So this report has some -- will show</p> <p>17 some counterparties as well then?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. Is this '87 or '07?</p> <p>21 Q. '87. This is '87.</p> <p>22 A. Okay, okay.</p> <p>23 Q. Would your answer change for '07?</p> <p>24 A. No.</p> <p>25 Q. Okay. Will you go ahead forward two more</p>	<p>1 counterparty to trades as well?</p> <p>2 A. No. They weren't a counterparty of the</p> <p>3 trade. I can't -- I can't answer that question</p> <p>4 because I'm not sure myself.</p> <p>5 Q. Okay.</p> <p>6 A. SIAC you understand doesn't hold</p> <p>7 securities.</p> <p>8 Q. Understood.</p> <p>9 A. Okay.</p> <p>10 Q. If you look down a few more lines to Medco</p> <p>11 Research, Inc --</p> <p>12 A. Right.</p> <p>13 Q. -- WTSX 11-7-08, that would be a warrants</p> <p>14 trade?</p> <p>15 A. Yes.</p> <p>16 Q. And so tell me about the type of trading</p> <p>17 that you were doing at this time period.</p> <p>18 A. In '07?</p> <p>19 Q. In 1987.</p> <p>20 A. '87?</p> <p>21 MR. GOLDMAN: You mean money market or the</p> <p>22 IA, I mean, in the market? Pardon me. Which?</p> <p>23 Q. (By Ms. Fein) In the house five</p> <p>24 business --</p> <p>25 MR. GOLDMAN: Oh, all right.</p>
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<p>1 pages, actually, it's four more ending at 958?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Do you see in the middle of the page MCI</p> <p>4 Communications Corp? Is that a bond trade that you</p> <p>5 see?</p> <p>6 A. I'm looking at the wrong page.</p> <p>7 Q. Oh.</p> <p>8 A. Yes. A bond trade.</p> <p>9 Q. Okay. So this report shows market making</p> <p>10 -- actually, let me back up. Initially we defined</p> <p>11 house five as encompassing the market making and</p> <p>12 proprietary trading businesses of your firm; right?</p> <p>13 A. I believe that's correct, yes.</p> <p>14 Q. Okay. This report shows some transactions</p> <p>15 in securities and some transactions in bonds. Do</p> <p>16 you agree?</p> <p>17 A. Yes. Well, I see here MCI sub convert,</p> <p>18 yes, correct.</p> <p>19 Q. And this trade actually has SIAC?</p> <p>20 A. Yes.</p> <p>21 Q. Does this appear to have SIAC on the other</p> <p>22 side?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Could you -- can you explain trading? Did</p> <p>25 SIAC just keep track of the trades or were they a</p>	<p>1 Q. (By Ms. Fein) -- what trading were you</p> <p>2 doing in 1987?</p> <p>3 A. Sort of beats me. I don't know. I did a</p> <p>4 little bit of everything. I wasn't -- I really --</p> <p>5 I'm not sure that I considered myself a market maker</p> <p>6 at that time. I traded for the firm's investment</p> <p>7 account.</p> <p>8 Q. Okay.</p> <p>9 A. And I also traded for customer accounts as</p> <p>10 well.</p> <p>11 Q. When you say you traded for customer</p> <p>12 accounts, is that what you referred to when we were</p> <p>13 talking about the inventory where you would move</p> <p>14 trades from inventory into customer accounts or are</p> <p>15 you talking about something different?</p> <p>16 A. No. Well, it could be a journal. If we</p> <p>17 had securities in an investment account and we had</p> <p>18 any number of investment accounts depending upon</p> <p>19 what the firm, whether we considered it a long-term</p> <p>20 transaction or it was just, you know, part of a --</p> <p>21 of trading for a client, there are various forms of</p> <p>22 trading that we did for the investment account, you</p> <p>23 know. So I don't know how to -- I'm not sure what</p> <p>24 you're trying -- maybe if I knew what you were</p> <p>25 trying to find out, I'd make it -- might be able to</p>

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<p>1 help you with that --</p> <p>2 Q. Okay.</p> <p>3 A. -- but I don't know.</p> <p>4 Q. Well, when you -- so you're saying you</p> <p>5 weren't doing much market making during this time</p> <p>6 frame, but you were trading -- you were doing some</p> <p>7 proprietary trading it sounds like?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Will you turn to the next page? It</p> <p>10 ends in 959. It's here. Do you see the County of</p> <p>11 Nassau on Series A transaction listed?</p> <p>12 A. Uh-huh.</p> <p>13 Q. And then under there it says Bernard, dash,</p> <p>14 trading?</p> <p>15 A. Correct.</p> <p>16 Q. Would this be a trade -- this means that</p> <p>17 there's a -- would that be your trade that's</p> <p>18 showing?</p> <p>19 A. It might be, yes. Well, if it says me, I</p> <p>20 mean, it meant that I did that, that I did that</p> <p>21 particular transaction.</p> <p>22 Q. So this report does show trades that you</p> <p>23 were doing in addition to your other traders?</p> <p>24 A. Correct.</p> <p>25 Q. I guess I'm trying to understand why you</p>	<p>1 Q. And it shows a counterparty or would you</p> <p>2 agree this report shows where the securities are</p> <p>3 held that are listed here?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Do you see any other counterparties</p> <p>6 listed on this page other than the ones we've</p> <p>7 reviewed so far?</p> <p>8 A. I see Smith Barney.</p> <p>9 Q. Okay.</p> <p>10 A. I also see SIAC.</p> <p>11 Q. Uh-huh.</p> <p>12 A. Now, I don't know whether SIAC is</p> <p>13 representing -- represents other traders or whether</p> <p>14 that's sort of a netting process. I don't know.</p> <p>15 That was done in '87.</p> <p>16 Q. Okay, yeah. Do you see in the second entry</p> <p>17 the Microsoft Corp? It says Peter, trading, and</p> <p>18 then Goldman Sachs underneath it?</p> <p>19 A. Correct.</p> <p>20 Q. Would that be another counterparty?</p> <p>21 A. Yes.</p> <p>22 Q. And do you see across from the names of the</p> <p>23 counterparties they have different account numbers</p> <p>24 as well? So DTC appears to have the number 9993115?</p> <p>25 A. Uh-huh.</p>
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<p>1 would say that this wouldn't represent the trades in</p> <p>2 your firm. It has the trades that you were doing.</p> <p>3 It has the trades your other traders were doing. It</p> <p>4 shows who the counterparties are. It shows where</p> <p>5 the securities are held.</p> <p>6 I understand if you're saying it's not</p> <p>7 100 percent comprehensive, but I'm trying to figure</p> <p>8 out what this report shows and what it doesn't show.</p> <p>9 Do you understand that?</p> <p>10 MR. KRATENSTEIN: Object to the form of</p> <p>11 the question.</p> <p>12 THE WITNESS: I'm not sure I understand</p> <p>13 it. I'm saying that I don't know if you'll -- if</p> <p>14 these are the only records that reflect that. I</p> <p>15 can't answer your question.</p> <p>16 Q. (By Ms. Fein) Okay. Got it. But it does</p> <p>17 reflect trades that you were doing --</p> <p>18 A. Some of the trades.</p> <p>19 Q. -- in July '87?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 A. Are we back -- oh, yeah. These are '87</p> <p>23 you're talking about?</p> <p>24 Q. Yeah.</p> <p>25 A. Okay.</p>	<p>1 Q. Okay, okay. We can put this document aside</p> <p>2 for now.</p> <p>3 A. Thank you.</p> <p>4 (Trustee's Exhibit Number 12 was marked</p> <p>5 for identification.)</p> <p>6 Q. (By Ms. Fein) We've spent enough time with</p> <p>7 it; right? So I'm going to show you what's being</p> <p>8 marked as Trustee Exhibit 12. Oh, yeah. You have</p> <p>9 to share a copy. These are big.</p> <p>10 MS. CHAITMAN: Okay.</p> <p>11 Q. (By Ms. Fein) Okay. Mr. Madoff, do you</p> <p>12 see the date at the top of the page?</p> <p>13 A. '07.</p> <p>14 Q. Uh-huh.</p> <p>15 A. Yes.</p> <p>16 Q. Yeah. This is December 31st, 2007; is that</p> <p>17 right?</p> <p>18 A. Right.</p> <p>19 Q. Is the title house 17 stock record summary</p> <p>20 through 12-31-07?</p> <p>21 A. Yes.</p> <p>22 Q. And do you see the handwriting on the same</p> <p>23 line run -- it looks like one and then illegible</p> <p>24 '08?</p> <p>25 A. Right.</p>

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<p style="text-align: right;">Page 559</p> <p>1 Q. So would this document have been prepared 2 in late 2007 or early 2008? 3 A. Yes. I assume, right. 4 Q. Okay. This report is another stock record, 5 correct, and it shows some of the same columns that 6 we were looking at on the last stock record. Do you 7 see at the top of the page? 8 A. Yes. 9 Q. Do you recognize from this page there are 10 some IA customer names on here? 11 A. Uh-huh, yes. 12 Q. And do you recognize that there are 13 customer accounts listed on the right-hand side of 14 the page? 15 A. Yes. 16 Q. This report would have been generated by 17 your house 17 staff most likely; right? 18 A. Correct. 19 Q. And the computer system you were using on 20 the house 17 side was an AS/400? 21 A. Correct. 22 Q. Would this report have been generated by 23 the AS/400 system? 24 A. I believe so. 25 Q. That's the same system that generated the</p>	<p style="text-align: right;">Page 561</p> <p>1 amounts in the long position equal the same as 2 what's shown here in the short position? 3 A. That's correct. 4 Q. We looked at a customer statement from 5 December 2007 and we talked about at this time in 6 December 2007 the customer statements showed 7 activity where the underlying securities hadn't been 8 purchased; right? 9 A. Correct. 10 MS. CHAITMAN: Objection. I do not 11 believe that the -- the split strike statements for 12 December ever showed securities. 13 MS. FEIN: Excuse me? So you mean because 14 I should have said treasuries instead of securities? 15 MS. CHAITMAN: Yeah, yeah. 16 MS. FEIN: So there were securities shown 17 as sold and then there were treasuries shown as 18 purchased on the December statement that we 19 reviewed. 20 MS. CHAITMAN: Okay, okay. 21 Q. Okay. And I can be clearer. So the 22 customer statements in December 2007 would have 23 shown -- would have shown treasuries that hadn't 24 been purchased; right? 25 MS. CHAITMAN: Objection to form. He's</p>
<p style="text-align: right;">Page 560</p> <p>1 customer statements and trade confirmations; right? 2 A. I don't know. I don't know what generated 3 the -- what system generated the trade, market 4 making. 5 Q. I'm sorry. I was referring to IA customer 6 trade confirmations and customer statements. 7 A. Yeah. That would be -- that would be the 8 AS/400. 9 Q. Okay. Do you know who would be reviewing a 10 report like this? 11 A. No. I assume someone in Annette's 12 department. 13 Q. Do you see underneath the security listed 14 there are customer names and then an entry below 15 that that says clearing banks? 16 A. Correct. 17 Q. Do you agree that number for account number 18 29000030 is not a customer account number; right? 19 The customer numbers typically have letters? 20 A. No. That looks like -- that looks like the 21 number they use for the clearing banks. 22 Q. Okay. The amount next to the clearing bank 23 number looks like 199066; right? 24 A. Correct. 25 Q. And I can represent to you that the four</p>	<p style="text-align: right;">Page 562</p> <p>1 already testified that they have been. 2 MS. FEIN: No. That's not correct, not in 3 2007. He said in 1987 that was true and in 2007 it 4 was not true. 5 MS. CHAITMAN: No. He said that he had -- 6 MS. FEIN: The record can speak for 7 itself. It's okay. The record can speak for 8 itself. 9 MS. CHAITMAN: Okay. You're 10 misrepresenting what he said. 11 MS. FEIN: Okay. I'm going to continue -- 12 MS. CHAITMAN: He said he didn't buy 64 13 billion, but he didn't say he didn't maintain the 14 portfolio. It's very different. 15 MS. FEIN: We can have this conversation 16 offline. 17 MS. CHAITMAN: Okay, okay. 18 MS. FEIN: I'm talking about what is 19 represented on the customer statements and the 20 aggregate. We talked about the number that was 21 represented on the customer statements, not the fact 22 that there were treasuries purchased at that time. 23 Okay. 24 MS. CHAITMAN: Okay. 25 Q. (By Ms. Fein) Okay. The term clearing</p>

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<p style="text-align: right;">Page 563</p> <p>1 bank here is used where you would typically have a 2 counterparty listed for where the securities were 3 held; right? 4 MR. KRATENSTEIN: Object to form. 5 THE WITNESS: It's the balancing number, 6 yes. 7 Q. (By Ms. Fein) Okay. And what do you mean 8 by the balancing number? 9 A. In other words, it typically would balance. 10 In other words, you would always have the -- if it 11 didn't balance, it would be -- it would be a broken 12 trade. Typically your long -- your long side would 13 always equal, always be represented on the short 14 position, should be the same. 15 Q. Okay. 16 A. When they use the term clearing banks, 17 that's not one single bank. It's just, you know, 18 any number of clearing banks that the transactions 19 were custodied at. And these -- I don't know why 20 you're looking -- I mean, I've already stated that 21 before that during this period in, you know, 2000s 22 or certainly post-'90s in general, that there were 23 times that I wasn't purchasing the securities. 24 Q. Okay. So when clearing banks is used here, 25 it's not --</p>	<p style="text-align: right;">Page 565</p> <p>1 for the Treasury bill listed on this page due 2 1-3-2008? 3 A. Uh-huh. 4 Q. And at the bottom of that entry there's the 5 term clearing banks again? 6 A. Correct. 7 Q. And in this context it's being used as a 8 place holder or filler -- 9 A. Right. 10 Q. -- counterparty for the trade; right? 11 A. Uh-huh. 12 Q. Okay. So this trade is not -- is one that 13 didn't happen in the market; right? 14 A. Correct. 15 Q. And would that be true for the entries that 16 show this clearing banks on this report in 2007, 17 would that be true for those trades? 18 A. Correct. 19 MS. FEIN: We'll try to go quickly. There 20 are a couple more reports of this size. So we're 21 going to mark one more, but we're done with this 22 one. 23 MR. KRATENSTEIN: I know all about trying 24 to go quickly through reports. 25 MS. FEIN: I'm not going to match your</p>
<p style="text-align: right;">Page 564</p> <p>1 A. It doesn't -- 2 Q. -- it doesn't mean the same thing as it 3 would if it showed DTC? 4 A. No. It wouldn't -- that would -- that was 5 a fraud period, in other words. So there's nothing 6 -- I can -- I'm perfectly willing, I've already 7 stated that anything post-'92 period is not going to 8 be accurate in my records. 9 Q. Okay. So the term clearing banks here is 10 used as a place holder for the other side of the 11 transaction; right? 12 A. Correct. 13 Q. Okay. I don't know. We've been going a 14 while. Would you like to take a break or do you 15 want to keep going? 16 A. I'm fine. 17 MS. FEIN: Okay. 18 MR. KRATENSTEIN: Are you done with this 19 one? 20 MS. FEIN: I think -- oh, you know what? 21 I have one more. I have one more thing I want to 22 look at. Thank you. Sorry. Can you turn -- I can 23 help you turn to the page, but the page is 498. Let 24 me help you figure it out. There you go. 25 Q. (By Ms. Fein) Do you see the transaction</p>	<p style="text-align: right;">Page 566</p> <p>1 speed. I promise. 2 MS. DASARO: This is a full one. 3 MS. FEIN: Okay. So we have excerpts of 4 this one -- 5 MR. KRATENSTEIN: Okay. 6 MS. FEIN: -- because it's very large. 7 MR. KRATENSTEIN: Thank you. 8 MS. CHAITMAN: So what number is this? 9 MS. FEIN: This is Number 13. 10 (Trustee's Exhibit Number 13 was marked 11 for identification.) 12 MR. GOLDMAN: Do you have the date because 13 this is sort of marked out. I just want to make 14 sure. It looks like 8-31-0 -- 15 MS. FEIN: '01. 16 MR. GOLDMAN: '01? 17 MS. FEIN: Yes. It is, I know. It's 18 easier on some pages to read than others. 19 MS. CHAITMAN: I'd just like to make a 20 statement for the record. Amanda, you objected to 21 some of the areas of our questioning on the basis 22 that it was not a part of the day two subjects. 23 And, in fact, I had covered the T-bill issue in the 24 day one topics and you had an opportunity to fully 25 cross-examine Mr. Madoff on them, so --</p>

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<p style="text-align: right;">Page 567</p> <p>1 MS. FEIN: Understood. These reports are 2 really part of the microfilm report 3 cross-examination because that's one of the day two 4 topics, but I understand your position. 5 MS. CHAITMAN: Right. And, in fact, if 6 you had produced these documents in a timely manner 7 to us, we could have questioned him about them, but 8 you certainly could have. 9 MS. FEIN: I should clarify. These 10 documents are in the data room. The reports that 11 we're going through are all in the data room. 12 MS. CHAITMAN: Right. So then you had the 13 ability to question him about them during the day 14 one depositions. 15 MS. FEIN: And this is part of the day two 16 topics with respect to the microfilm reports that 17 I'm questioning him on. That's -- that's why 18 they're part of these topics. 19 MS. CHAITMAN: If this was in the data 20 room, wasn't it available to you when you were 21 questioning him? 22 MS. FEIN: This is in response to your 23 questioning. This is my cross-examination. 24 MS. CHAITMAN: Okay. And I think it's not 25 within the scope of the day two.</p>	<p style="text-align: right;">Page 569</p> <p>1 Q. At the bottom of this entry do you see 2 clearing banks listed on the other side? 3 A. Yes. 4 Q. And would that be used as a place holder 5 counterparty because there wasn't a counterparty to 6 this trade? 7 A. That's correct. 8 Q. Do you agree that this report shows IA 9 customer holdings? 10 A. Right. 11 MS. FEIN: Okay. We can be finished with 12 that document. 13 (Trustee's Exhibit Number 14 was marked 14 for identification.) 15 Q. (By Ms. Chaitman) Yes. We're all set with 16 that. This is Trustee Exhibit 14. 17 MR. KRATENSTEIN: Excuse me. 18 Q. (By Ms. Chaitman) Is the title of this 19 document house 17 stock record summary through 20 3-31-94? 21 A. Yes. 22 Q. Does it appear similar to the other stock 23 record summaries we reviewed previously? 24 A. Uh-huh. 25 Q. It has the same column headings; right?</p>
<p style="text-align: right;">Page 568</p> <p>1 MS. FEIN: Understood. 2 Q. (By Ms. Fein) Okay. So, Mr. Madoff, this 3 report is entitled abbreviated stock record summary 4 through 8-31-01. Do you see that at the top of the 5 page? I'm sorry. Let me get it ready for you. 6 This report that I'm holding, abbreviated stock 7 record summary through 8-31-01? 8 A. Uh-huh. 9 Q. And on the left it says distribution, 10 Annette. Do you believe that's referring to Annette 11 Bongiorno? 12 A. I assume so because I don't think we have 13 another person named Annette. 14 Q. And this is 2001. If you look at the first 15 transaction -- 16 A. Right. 17 Q. -- do you see Daimler Chrysler AG listed as 18 the security? 19 A. Correct. 20 Q. And at the bottom do you see customer names 21 listed after that? 22 A. Yes. 23 Q. And customer account numbers listed to the 24 left -- I'm sorry -- to the right of that; right? 25 A. Yes.</p>	<p style="text-align: right;">Page 570</p> <p>1 A. Right. 2 Q. The first security that's listed under 3 security account name, ATD, Ltd. Do you see that? 4 A. Yes. 5 Q. And then do you see customer names listed 6 underneath the security. 7 A. Yes. 8 Q. And customer account numbers that are 9 listed on the right-hand side; right? 10 A. Yes. 11 Q. So would this be referring to customer 12 positions in -- in 1994 when this report was put 13 together? 14 A. Correct. 15 Q. And do you see the clearing bank's entry at 16 the end of the -- at the end of the ADT security 17 list? 18 A. Uh-huh, yes. 19 Q. And the account number 29000030, do you see 20 that? 21 A. Yes. 22 Q. Would this also be a place holder 23 counterparty? 24 A. Yes. 25 MS. FEIN: So I think we're done with that</p>

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<p style="text-align: right;">Page 571</p> <p>1 one. 2 (Discussion off the record.) 3 MS. FEIN: Okay. I'm going to mark this 4 Exhibit 15. 5 MS. CHAITMAN: Will you be sending us a 6 complete set of these exhibits? 7 MS. FEIN: That's no problem. 8 MS. CHAITMAN: Okay. 9 MS. FEIN: Sorry it's so large. It's just 10 -- whoops. 11 Q. (By Ms. Fein) Okay. Do you see in the 12 middle of the page the title of this report? 13 A. Yes. 14 Q. Is it house 17 stock record summary through 15 7-16-87? 16 A. Yes. 17 Q. Do you see the first trade listed under the 18 title AGS Computers, Inc. sub deb conv? 19 A. Correct. 20 Q. Is that a convertible arb trade? 21 A. Yes. 22 Q. And do you see IA customers listed 23 underneath that? 24 A. Uh-huh. 25 Q. Okay. Do you see at the end of that same</p>	<p style="text-align: right;">Page 573</p> <p>1 at the end of that transaction or at the bottom of 2 the -- I'm sorry. Let me back up. Is there a list 3 of IA customers underneath the AMR Corp listing 4 security? 5 A. Yes. 6 Q. And do you see there on the right-hand 7 column there are IA account numbers listed? 8 A. Correct. 9 Q. Do you see the clearing banks entry at the 10 bottom of the AMR Corp transaction or the long 11 positions? 12 A. Correct. 13 Q. And do you see the account number 2900030? 14 A. Yes. 15 Q. Would this be a filler counterparty that 16 was used on your reports? 17 A. When you say filler counterparty, why -- 18 what are you referring to? 19 Q. Well, what we were referring to on the 20 earlier reports is that those trades didn't occur, 21 but you needed to have another side to the 22 transaction; right? 23 A. If, in fact -- if, in fact, it was during a 24 period that we were not doing the transaction, the 25 actual transaction.</p>
<p style="text-align: right;">Page 572</p> <p>1 set the term clearing banks used? 2 A. I don't see. Oh, yes. 3 Q. Okay. Would that be used as a filler 4 counterparty in this report? 5 A. Yes. 6 Q. And if you turn ahead to page ending -- I 7 think it's two pages ahead ending in 064. Sorry 8 about this. Do you see a transaction in -- oh, you 9 know what? The pages for this one so that it would 10 print out so we could read it, it's three pages per 11 on your copy. His copy has a page -- 12 MR. KRATENSTEIN: Okay. Could you just 13 show us where to go? 14 MS. FEIN: No problem. 15 MR. KRATENSTEIN: Thank you. 16 MS. CHAITMAN: So what is the date of this 17 document? 18 MR. KRATENSTEIN: 7-16-87. 19 MS. CHAITMAN: 7-16-87. 20 MS. FEIN: This is the -- 21 MR. KRATENSTEIN: Thank you very much. 22 Q. (By Ms. Fein) Do you see the AMR Corp 23 transaction listed at the bottom of the page? 24 A. Uh-huh. 25 Q. Okay. And do you see clearing banks listed</p>	<p style="text-align: right;">Page 574</p> <p>1 Q. Okay. 2 A. You're talking about a period now in 1987 3 that we did the transactions. 4 Q. Okay. 5 A. So that would be -- when you say a filler, 6 I'm assuming you're assuming that the trade wasn't 7 done. 8 Q. Okay. 9 A. That doesn't mean that every time we used 10 clearing banks that there wasn't an actual trade 11 being done. 12 Q. Okay. 13 A. What I had said originally, I was 14 explaining to you, it would be a balancing number. 15 It should always -- it would always balance. If 16 didn't balance, there would be a break in the 17 transaction. That's -- so if that didn't balance, 18 it didn't match the number of shares bought, it 19 would alert the -- whoever was running the records 20 that there's an error, you know, that we're missing 21 something there. 22 Q. Okay. 23 A. You also have to understand that when 24 you're talking about treasuries, for example, there 25 were treasuries that were bought under the firm's</p>

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<p style="text-align: right;">Page 575</p> <p>1 name, you know, at a place like Morgan Stanley or 2 Fidelity and so on that would not be reflected 3 necessarily on my books and records. 4 Q. You mean in the 1987 time frame? 5 A. Not in the 1987. In the later period. 6 Q. Okay. What do you mean they wouldn't be 7 reflected on your books and records? 8 A. In other words, I'm not sure how they 9 handled -- even in the '87 period, I'm not sure, you 10 know, how those treasuries were handled, you know, 11 whether they were bought. Depends upon how they 12 were purchased. You'd have to ask -- during '87 13 wouldn't be Frank DiPascali because he wasn't 14 handling that. You'd have to speak to someone else 15 who would know that. I don't know how they handled 16 that transaction. 17 Q. Would Annette maybe know? 18 A. Probably not, not during that period. 19 Q. Okay. So this is a trade in AMR Corp 20 that's listed? 21 A. Uh-huh. 22 Q. AMR Corp was -- the DTC held AMR Corp 23 securities in 1987 because we saw that on the 24 earlier report we reviewed; right? 25 A. Correct.</p>	<p style="text-align: right;">Page 577</p> <p>1 Q. But these securities listed here wouldn't 2 be held at DTC or else you would show DTC on the 3 other side; right? So it has to be held at another 4 clearing firm? 5 A. That's correct. 6 Q. Okay. I'm just going to go back to show 7 you something on Exhibit 11. All right. So the 8 first transaction in AMR Corp, the balance held at 9 DTC as shown on this report for July 16th, 1987 is 10 3,357; correct? 11 A. Uh-huh. 12 Q. If you look at the short position shown on 13 the AMR Corp trade here for the same date, 14 July 16th, 1987, how many shares does it say are 15 held at the clearing banks? 16 A. It looks like -- 17 MS. CHAITMAN: When you say here, what 18 document are you asking to look at? 19 MS. FEIN: Sorry. So now we're looking 20 at -- 21 MS. CHAITMAN: Exhibit 15? 22 MS. FEIN: -- Exhibit 15, page ending in 23 064. 24 THE WITNESS: Is that 290,000 or -- 25 MS. FEIN: I think it's -- let me just</p>
<p style="text-align: right;">Page 576</p> <p>1 MR. KRATENSTEIN: Object to the form. 2 Q. (By Ms. Fein) But it's your testimony that 3 these shares weren't -- is it your testimony that 4 these shares were not held at DTC even though DTC 5 could hold the securities? 6 A. I don't see the DTC. 7 Q. Right. 8 A. No. I don't see DTC. 9 Q. It just says clearing banks; right? 10 A. Clearing banks, right. 11 Q. And it's -- 12 A. So that could be any number of five 13 different clearing banks we had and, you know, 14 probably eight different clearing banks that were 15 used to -- as a depository to clear the transaction. 16 Q. Wouldn't you need to know who was on -- who 17 was holding the securities for your transactions? 18 Why would it show up as clearing banks? 19 A. It would. There would be a subsidiary 20 ledger that would show that. 21 Q. Okay. 22 A. The stock record only shows -- just like at 23 DTC, you know, it's just one entity. There were 24 subsidiary ledgers that would show where the 25 securities were held.</p>	<p style="text-align: right;">Page 578</p> <p>1 make sure. 2 MS. CHAITMAN: So I can't read this. 3 Trustee Exhibit 11 is house five? Is that what it 4 says at the top? 5 MR. KRATENSTEIN: Yes. 6 MS. FEIN: It does. 7 MS. CHAITMAN: And Trustee Exhibit 15 is 8 house five also? 9 MS. FEIN: House 17. 10 MS. CHAITMAN: House 17, okay. 11 Q. (By Ms. Fein) So just to be clear, we're 12 looking at the AMC security at the bottom of that 13 transaction. It says clearing banks. The account 14 number listed is 29,000, three zero, and then 15 there's a short position listed. What short are 16 they showing? 17 A. 332, right, 785. 18 Q. Yes. So for the same date that you had a 19 little over 3,000 shares held at DTC as shown on 20 your house five stock record summary -- 21 A. Correct. 22 Q. -- this shows over 330,000 shares in the 23 same security; right? 24 A. In the 17 -- in the 17 account. 25 Q. Right. On the house 17 side?</p>

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<p style="text-align: right;">Page 579</p> <p>1 A. Right, right.</p> <p>2 MS. FEIN: Okay. Now is a good time to</p> <p>3 take a break if that's okay with everyone.</p> <p>4 EXAMINATION</p> <p>5 BY MR. GOLDMAN:</p> <p>6 Q. I have two questions. They're quick</p> <p>7 questions. I don't know if the answers are long,</p> <p>8 but Ms. Chaitman asked you earlier on about</p> <p>9 confirmations on transactions.</p> <p>10 A. Yeah. What? Oh, I didn't know you were</p> <p>11 talking to me.</p> <p>12 Q. Ms. Chaitman asked you some questions about</p> <p>13 confirmations, whether you got confirmations.</p> <p>14 Sometimes you did get confirmations, sometimes you</p> <p>15 didn't --</p> <p>16 A. Yes.</p> <p>17 Q. -- at the time you were looking through all</p> <p>18 the transactions that occurred?</p> <p>19 A. Correct.</p> <p>20 Q. Was there a procedure or protocol in place</p> <p>21 to authenticate that the transactions actually</p> <p>22 occurred? This is prior to '92. Did you get</p> <p>23 something back from whoever you contracted to have</p> <p>24 the transaction performed?</p> <p>25 A. If it was -- if it was a -- if the</p>	<p style="text-align: right;">Page 581</p> <p>1 A. They had --</p> <p>2 Q. Statements of transactions?</p> <p>3 A. Some clients got them quarterly and some</p> <p>4 clients got them monthly.</p> <p>5 Q. Okay.</p> <p>6 A. Depends upon whether they requested them,</p> <p>7 when they requested them.</p> <p>8 Q. And if there were short transactions that</p> <p>9 occurred for that particular client or customer, was</p> <p>10 it indicated on the statement that it was a short</p> <p>11 transaction?</p> <p>12 A. No.</p> <p>13 Q. Nothing. Just --</p> <p>14 A. No brokers indicated to the customer</p> <p>15 because the customer didn't care whether it was a</p> <p>16 short transaction or it was a long transaction.</p> <p>17 They didn't care whether the broker was short or</p> <p>18 whether he was long. They looked -- the ownership</p> <p>19 rights were the same. In other words, you were</p> <p>20 entitled to the dividend. You were entitled to a</p> <p>21 stock split or any action, corporate action.</p> <p>22 MR. GOLDMAN: Okay. Thanks.</p> <p>23 MR. KRATENSTEIN: Take a break?</p> <p>24 MS. DASARO: Yes, thanks.</p> <p>25 THE VIDEOGRAPHER: Going off the record.</p>
<p style="text-align: right;">Page 580</p> <p>1 transaction was handled through NSCC, if it was part</p> <p>2 of the C&S netting practice. I'm not sure that I</p> <p>3 understand the question.</p> <p>4 Q. Okay. How did -- how were you assured that</p> <p>5 the order, whether it was a purchase or a sale,</p> <p>6 actually occurred if you have it listed on your</p> <p>7 account that's your own internal records? How were</p> <p>8 you assured that the transaction actually occurred?</p> <p>9 A. That was handled, would have been handled</p> <p>10 by the what we call the P&S department, the purchase</p> <p>11 and sales department. And they would typically</p> <p>12 either get a confirmation or if it went through the</p> <p>13 clearing house, you know, and, again, depending upon</p> <p>14 if that was during the netting period or not, you</p> <p>15 would get what they call a balance order from the</p> <p>16 clearing corporation.</p> <p>17 It also -- also depends upon whether or not</p> <p>18 we had an automatic interface with the firm that was</p> <p>19 on the other side of the transaction.</p> <p>20 Q. But there was some procedure or protocol in</p> <p>21 place?</p> <p>22 A. Oh, yeah. Of course, yes.</p> <p>23 Q. And the second question I have, did you</p> <p>24 send your clients, customers, clients quarterly or</p> <p>25 monthly financial statements?</p>	<p style="text-align: right;">Page 582</p> <p>1 The time is 10:32.</p> <p>2 (A recess was taken.)</p> <p>3 THE VIDEOGRAPHER: Back on the record.</p> <p>4 This begins tape number two in the deposition of</p> <p>5 Bernard L. Madoff in Butner, North Carolina on</p> <p>6 November 9th, 2017. The time is 11:07.</p> <p>7 FURTHER EXAMINATION</p> <p>8 BY MS. FEIN:</p> <p>9 Q. Mr. Madoff, do you remember yesterday Mr.</p> <p>10 Kratenstein asked you about a list of banks where</p> <p>11 you performed clearing functions?</p> <p>12 A. Correct.</p> <p>13 Q. You provided us a list when we met with you</p> <p>14 in April and I can show it to you --</p> <p>15 A. Uh-huh.</p> <p>16 Q. -- if you want to see it, if it helps</p> <p>17 refresh your recollection about what those firms</p> <p>18 are.</p> <p>19 A. Right.</p> <p>20 Q. This just the testimony from April 26,</p> <p>21 2017.</p> <p>22 A. Uh-huh.</p> <p>23 Q. Do you see around line ten there's a list</p> <p>24 that includes Meadowbrook National Bank, Commercial</p> <p>25 Bank of North America, Irving Trust Company, Bank of</p>

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<p style="text-align: right;">Page 583</p> <p>1 New York, Bankers Trust, Manufacturers Hanover, 2 Chase Manhattan, Marine Midland, Chemical Bank, 3 JPMorgan Bank, Continental Illinois Bank and M&T 4 Bank? 5 A. Yeah. 6 Q. Do you recall any firms -- scratch that. 7 Do you see right below that in the testimony -- 8 well, actually, here. You listed what services 9 those banks provided to you on the next page. And 10 then you were asked do they have custodial accounts 11 where you maintain securities for customers. 12 Did this list of banks we just went 13 through, did any of those have custodial accounts 14 where securities were maintained for customers? 15 A. Okay. What is the question? 16 Q. The list of banks that we just reviewed -- 17 A. Right. 18 Q. -- did any of those banks have custodial 19 accounts where you maintained securities for 20 customers? 21 A. When you say did they have accounts they 22 maintained for customers, they would have -- no. 23 The answer would be that they would have usually one 24 account for the firm. They wouldn't -- they 25 wouldn't have -- they wouldn't identify them by</p>	<p style="text-align: right;">Page 585</p> <p>1 MR. KRATENSTEIN: Thank you. 2 Q. (By Ms. Fein) This right here. You were 3 asked by Ms. Chaitman about this list of banks. Did 4 they have custodial accounts where you maintained 5 securities for customers. Your answer, not that I'm 6 aware of, no. So I guess I'm trying to understand 7 why your answer is different today? 8 A. I'm not sure that it's different. When you 9 say do I own -- when you're asking was I own -- 10 maintain a custodial account for a customer, it 11 would be -- the answer would be yes. It depends 12 upon the period you're talking about. The stock 13 records would show -- the stock record would show 14 the customers that we had securities for. That's on 15 the stock record. 16 That's the only record that we would 17 maintain of that. And I would assume that the 18 question you were asking when you say did we have -- 19 did the banks have custodial, the answer would be, 20 you know, they wouldn't know who our customers were. 21 They would just have -- they would just -- the firm 22 is the customer. 23 We don't tell the bank that these 24 securities -- that these securities that we're 25 clearing through you are for John Jones. No one</p>
<p style="text-align: right;">Page 584</p> <p>1 customers. That was the same practice with DTC. In 2 other words, there was -- I don't know what the 3 terminology would be because my brain isn't working, 4 but they would have one account. They wouldn't 5 break it out by clients. 6 Q. This question was and my question to you, 7 did you have custodial accounts where you maintained 8 securities for customers? 9 A. Yes. 10 Q. Okay. When you were asked -- so this 11 deposition took place on April 26, 2017. You 12 remember you were under oath for that deposition; 13 right? 14 A. Correct. 15 Q. And the answer to the question you provided 16 then -- 17 MR. GOLDMAN: Why don't you read it? 18 MS. FEIN: Sure. 19 MR. GOLDMAN: Thanks. 20 MS. FEIN: Yeah. 21 MR. KRATENSTEIN: Tell us where you are. 22 I have it here, so -- 23 MS. FEIN: Okay, sure. I'm on page 33. 24 MR. KRATENSTEIN: Yes. 25 MS. FEIN: And the line is line six.</p>	<p style="text-align: right;">Page 586</p> <p>1 does that. We don't identify that. And they don't 2 -- for example, they don't -- they don't have a 3 record of who the clients were. It's the same thing 4 with DTC. 5 Q. I understand that. 6 A. Oh, okay. 7 Q. I do understand that. 8 A. That's the question. I'm not sure what 9 your question was. 10 Q. Okay. Well, my question is you -- 11 A. I don't think it's -- what I'm saying, I 12 don't know that my response to Helen Chaitman is 13 different than what I had made then. At least I 14 don't see the difference. 15 Q. Well, this refers to accounts you would 16 have, your firm would have -- 17 A. Right. 18 Q. -- where you maintain securities for 19 customers. 20 A. Right. 21 Q. Not that they would be segregated 22 necessarily. 23 A. Oh. 24 Q. Just that you maintain the securities for 25 customers.</p>

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<p style="text-align: right;">Page 587</p> <p>1 A. Right.</p> <p>2 Q. And when you were asked in April the answer</p> <p>3 to that question was no, but it sounds like today</p> <p>4 your answer is different?</p> <p>5 MR. KRATENSTEIN: I object to the form of</p> <p>6 the question.</p> <p>7 MS. CHAITMAN: Yeah. I think what he was</p> <p>8 saying was I think the way the first -- the way my</p> <p>9 question was worded, he thought does he maintain at</p> <p>10 an institution account for Mrs. Jones and Mrs. Brown</p> <p>11 and --</p> <p>12 MS. FEIN: Okay. Your interpretation</p> <p>13 notwithstanding --</p> <p>14 MR. KRATENSTEIN: Just for the record,</p> <p>15 you're interpreting his testimony, too, so --</p> <p>16 MS. FEIN: I was just trying to read it</p> <p>17 and then understand what it said.</p> <p>18 Q. (By Ms. Fein) Okay. So is your testimony</p> <p>19 today that the banks that we listed -- actually, let</p> <p>20 me go back. That set of banks that we went over</p> <p>21 didn't include NatWest; right?</p> <p>22 A. What do you mean didn't include it?</p> <p>23 Q. So you listed 11 banks during your</p> <p>24 testimony that day. NatWest wasn't one of them;</p> <p>25 right? And the list is here.</p>	<p style="text-align: right;">Page 589</p> <p>1 entities.</p> <p>2 Q. So if you were clearing transactions</p> <p>3 through those other entities, you wouldn't be</p> <p>4 relying on your back office for the purposes of</p> <p>5 delivery of the securities or --</p> <p>6 A. Well, the back office would eventually --</p> <p>7 they would start with us, you know. Like we bought</p> <p>8 the stock, but we would give instructions to the</p> <p>9 counterparty, deliver the securities to this broker</p> <p>10 or this bank and so on and so on. It depends upon</p> <p>11 the transaction.</p> <p>12 I mean, we were the one that would actually</p> <p>13 buy the securities, but then again there were times</p> <p>14 that we would call them depending upon what it was.</p> <p>15 Like if it was a Treasury instrument, we would</p> <p>16 typically just call JPMorgan or Bank of New York and</p> <p>17 they would actually buy the transaction.</p> <p>18 Q. And did you say where would you be keeping</p> <p>19 track of --</p> <p>20 A. We would have an internal record of that</p> <p>21 somewhere at the firm.</p> <p>22 Q. Okay.</p> <p>23 A. Whether -- and, again, it depends upon at</p> <p>24 what stage it was and what our ordination was and</p> <p>25 what the bank's -- we had direct interfaces with</p>
<p style="text-align: right;">Page 588</p> <p>1 A. Because it would have been NatWest took</p> <p>2 over -- as I said, I believe I said in the other</p> <p>3 testimony earlier, these banks merged with each</p> <p>4 other. So, for example, Meadowbrook National Bank</p> <p>5 became NatWest at one point in time, you know.</p> <p>6 Q. Okay. So --</p> <p>7 A. NatWest would have been one of them.</p> <p>8 Again, this was -- I said pretty much covers it. I</p> <p>9 was giving a list of the banks that I had remembered</p> <p>10 that I was familiar with, but Meadowbrook National</p> <p>11 was merged with NatWest the same way that Chase</p> <p>12 Manhattan and Manufacturers became Chase Manhattan</p> <p>13 and then Chase Manhattan became JP Morgan.</p> <p>14 Q. Okay. I had thought National Bank of North</p> <p>15 America had merged with NatWest. Does that ring a</p> <p>16 bell for you?</p> <p>17 A. No. Nat -- oh, I don't know. I don't</p> <p>18 remember.</p> <p>19 Q. Okay, okay. Understood.</p> <p>20 A. I mean, my question was answered just that</p> <p>21 I had other facilities, clearing facilities through</p> <p>22 banks and brokerage firms. I didn't list them all.</p> <p>23 It was just that -- just saying that besides being a</p> <p>24 self-clearing firm, I also had arrangements and did,</p> <p>25 in fact, clear certain transactions through other</p>	<p style="text-align: right;">Page 590</p> <p>1 some of these banks and brokerage firms the same way</p> <p>2 that we had -- that we had direct interfaces with</p> <p>3 NCC and DTC and so on and so forth.</p> <p>4 Q. Okay. So your -- for the period of time</p> <p>5 let's say the 1980s --</p> <p>6 A. Uh-huh.</p> <p>7 Q. -- it's your testimony those transactions</p> <p>8 were taking place in the market; right?</p> <p>9 A. Yeah.</p> <p>10 Q. They were taking place within your house</p> <p>11 five business; is that right?</p> <p>12 A. It depends upon who would -- who we were</p> <p>13 acting for. If it was -- and whether it was just a</p> <p>14 transaction coming out of the inventory account of</p> <p>15 the firm, you know, out of the -- and we had any</p> <p>16 number -- we had different trading accounts</p> <p>17 depending upon the strategy and who was handling it.</p> <p>18 So there was internal records somewhere in the firm.</p> <p>19 I mean, obviously, you know, we had to have</p> <p>20 some record, you know, and to be able to track it.</p> <p>21 And then there was the stock record which showed</p> <p>22 the -- usually the global picture but, again, you</p> <p>23 can have any number of stock records.</p> <p>24 Q. Okay. The trades shown on your convertible</p> <p>25 arb customer statements in the '80s --</p>

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<p style="text-align: right;">Page 591</p> <p>1 A. Right.</p> <p>2 Q. -- would have -- so tell me, you're saying</p> <p>3 there's more than one place that those trades could</p> <p>4 have originated?</p> <p>5 A. Correct.</p> <p>6 Q. Is there more than one place that those</p> <p>7 trades would have been cleared through?</p> <p>8 A. Yes. Again, depends upon whether the</p> <p>9 entity or the bank was also a market maker in the</p> <p>10 security depending upon where they were located and</p> <p>11 so on. So, in other words, the bank -- these banks</p> <p>12 and other brokerage firms like a Bear Stearns or a</p> <p>13 low roads, they're also, you know, competitors of</p> <p>14 ours. In other words, they're also doing the same</p> <p>15 thing that we're doing.</p> <p>16 And there are any number of ways that you</p> <p>17 do a -- that you can buy or sell transactions. You</p> <p>18 can actually go out into the market -- into the</p> <p>19 street to buy the security.</p> <p>20 We might do a swap with a particular firm,</p> <p>21 which is -- I don't want to bore you with all the</p> <p>22 details, but the same way that when you're doing a</p> <p>23 convertible transaction trade, you can rather than</p> <p>24 put the bond into conversion to convert it into</p> <p>25 stock, which would eventually have to go to -- if</p>	<p style="text-align: right;">Page 593</p> <p>1 He may want the bond and he's willing to</p> <p>2 give me stock for it and then you do a stock swap.</p> <p>3 And when I say short, you know, you're talking about</p> <p>4 it's like a short exempt transaction. In other</p> <p>5 words, I'm selling stock, you know, that -- which is</p> <p>6 short, which I don't have the stock at the time but</p> <p>7 I have a bond at the time.</p> <p>8 Q. So are you saying that where your various</p> <p>9 bonds and securities cleared would be dependent on</p> <p>10 the type of bond or security in part, right, because</p> <p>11 some places wouldn't clear certain --</p> <p>12 A. Right.</p> <p>13 Q. -- certain bonds or certain securities?</p> <p>14 A. Well, any bank would -- any bank would</p> <p>15 clear any transaction that you do, but depending</p> <p>16 upon what you want to do. If I was looking to</p> <p>17 convert the bond into common stock, which means I'm</p> <p>18 going to exchange the bond position, then the bank</p> <p>19 itself might have -- you know, if they're a market</p> <p>20 maker they might be willing to say okay, look,</p> <p>21 Madoff wants to convert -- he wants to exchange the</p> <p>22 bond for stock.</p> <p>23 You know, we'll give him the stock --</p> <p>24 they'll give me the stock from their inventory to</p> <p>25 satisfy what I'm asking him to do and take the bond</p>
<p style="text-align: right;">Page 592</p> <p>1 you did that, you would have to put it through</p> <p>2 whoever the -- whoever was the conversion agent, you</p> <p>3 know, for that particular security. You could also</p> <p>4 go to -- we would -- we could go to another broker,</p> <p>5 another market maker and swap, in other words, swap</p> <p>6 our bond for stock, you know, that it was</p> <p>7 convertible into because then they may be doing the</p> <p>8 opposite side of the transaction that we do.</p> <p>9 These are things that in the Dubinsky</p> <p>10 report he seemed to be totally unaware of. Like he</p> <p>11 made statements, well, I contacted the conversion</p> <p>12 agent of the particular security that we -- the bond</p> <p>13 and they didn't have any agreement in place with</p> <p>14 Madoff as if that was the only way that you could</p> <p>15 exchange.</p> <p>16 The idea is when you're doing a convertible</p> <p>17 trade if you do it depending upon, again, what the</p> <p>18 strategy you're using, if it's strictly to buy the</p> <p>19 bond for the client and then sell the common stock,</p> <p>20 you know, short, you know, against that, and then</p> <p>21 you're going to -- you either convert it physically</p> <p>22 by sending it to the conversion agent or you can, in</p> <p>23 fact, go ahead and exchange with another market</p> <p>24 maker in that particular bond and say okay, look, I</p> <p>25 want to -- I'll exchange my bond.</p>	<p style="text-align: right;">Page 594</p> <p>1 into their inventory. Did I lose you or not?</p> <p>2 MS. FEIN: Okay. No. So we looked at an</p> <p>3 exhibit yesterday, maybe also today. Maybe it's in</p> <p>4 this other pile.</p> <p>5 MR. KRATENSTEIN: What number are you</p> <p>6 looking for?</p> <p>7 MS. FEIN: I'm looking for 39. It's in</p> <p>8 that other pile. I wanted to look at one document</p> <p>9 that we looked at yesterday, but I don't see it.</p> <p>10 Thank you.</p> <p>11 MR. KRATENSTEIN: You want 39?</p> <p>12 MS. FEIN: Yeah. Didn't see it there.</p> <p>13 (Discussion off the record.)</p> <p>14 Q. (By Ms. Fein) So looking at this</p> <p>15 Exhibit 39 that we reviewed yesterday, thank you, do</p> <p>16 you see -- this looks like a customer statement,</p> <p>17 right, for the most part other than the client?</p> <p>18 A. Right.</p> <p>19 Q. This format I should say.</p> <p>20 A. Uh-huh.</p> <p>21 Q. Do you see where it says balance forward,</p> <p>22 \$75,892,366.08? There's a debit balance listed?</p> <p>23 A. Right.</p> <p>24 Q. Do you know why there would be a debit</p> <p>25 balance on this report?</p>

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<p style="text-align: right;">Page 595</p> <p>1 MS. CHAITMAN: I'm sorry. Show me where 2 you are. 3 MS. FEIN: Just the first line of Exhibit 4 39, yeah. 5 MS. CHAITMAN: The debit, I see. 6 MS. FEIN: Yeah. 7 THE WITNESS: It might be, I'm assuming it 8 arose from activity that occurred in that account. 9 Q. (By Ms. Fein) Okay. That would mean that 10 the bank had owed you 75 million and change; right? 11 A. Based upon deliveries, what was taking 12 place in the account. See, this -- these securities 13 would have been -- these received and delivered 14 would have monies attached to it and all, which 15 doesn't show on the statement but it would be on 16 another, another statement depending on what was -- 17 what was flowing through. Obviously, it represents, 18 you know, the debits and credits that were involved 19 in these transactions. 20 MS. FEIN: Okay. 21 MR. KRATENSTEIN: I mean, if you look at 22 later -- if I could, if you look at later pages 23 there are debit and credit numbers listed on some of 24 the pages. 25 MS. FEIN: I do see that, yes.</p>	<p style="text-align: right;">Page 597</p> <p>1 securities or other bonds that would be -- 2 A. Right. 3 Q. -- listed in your account. Does that 4 appear to be true here as well? 5 A. I'm not sure whether this represents market 6 value of the securities or whether it represents a 7 customer statement. Our customer statements 8 reflected balances from the buying and the selling 9 and then there's a market value of the securities in 10 the account if you looked on the statement. I don't 11 know what -- I don't know what this represents. 12 Q. Okay. Because there's like -- there are 13 two different balances listed, so I was trying to 14 figure out why they were different. If you look at 15 new balance, which is at the end of this activity, 16 you see \$78,544,284.62? 17 A. Uh-huh. 18 Q. And then -- 19 MS. CHAITMAN: I'm sorry. Which page is 20 that? 21 MS. FEIN: Oh, on page 869. 22 MS. CHAITMAN: 869. 23 Q. (By Ms. Fein) Right before you get to the 24 security positions listed. And then at the end of 25 the report, the end of positions, those figures are</p>
<p style="text-align: right;">Page 596</p> <p>1 MR. KRATENSTEIN: Okay. 2 MS. FEIN: Thank you. 3 Q. (By Ms. Fein) At the end of the report if 4 you look at the page ending in 69, do you see where 5 security positions is listed? 6 A. Uh-huh. 7 Q. And then there are a number of positions 8 that follow from that? 9 A. Correct. 10 Q. A couple of pages later, it's the last page 11 of the document, it says end of positions? 12 A. Right. 13 Q. And there's a long and a short and a 14 difference? 15 A. Uh-huh. 16 Q. Would this list of security positions be 17 the securities that were listed in this account at 18 the time? 19 MS. CHAIRMAN: Objection to form. 20 THE WITNESS: I'm not sure I understand. 21 Q. (By Ms. Fein) Well, my question is -- 22 A. Yeah. I see this. 23 Q. -- typically at the bottom of your customer 24 statements and similar statements you would have 25 security positions and then you would have the</p>	<p style="text-align: right;">Page 598</p> <p>1 different, right, on the last page for the security 2 positions? 3 A. It would -- it would seem to me that this 4 is -- one of them is representing, this typically 5 would be representing what the market, the current 6 market of these positions were. 7 Q. Okay. That's your understanding of why 8 they're different? 9 A. I'm assuming. Typically on a customer 10 statement you would have the opening balance, like 11 you would have the opening balance and closing 12 balance is for the actual money flows out of the 13 account. And then at the end of -- the end of the 14 statement it shows what the open and long and short 15 positions are and what the current market value of 16 those are on a mark-to-market basis. 17 Q. Okay. 18 A. I mean, you can figure it out by adding up 19 what -- by just doing the math and adding up if it 20 tells you, for example, if it's showing you -- 21 whether or not it's showing you, you know, prices of 22 the securities. 23 Q. Uh-huh. 24 A. At least that's the way the customer 25 statement normally occurs.</p>

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<p style="text-align: right;">Page 599</p> <p>1 Q. Okay.</p> <p>2 A. I'm not familiar with what -- necessarily</p> <p>3 how the clearing accounts are handled on our books</p> <p>4 and records.</p> <p>5 Q. Okay. But these security positions that</p> <p>6 are listed here, you see there are some long</p> <p>7 positions and some short positions listed starting</p> <p>8 on page 869 and then through the next couple of</p> <p>9 pages?</p> <p>10 A. Right.</p> <p>11 Q. Would that mean that National Bank of North</p> <p>12 America owned those -- owned -- the long positions</p> <p>13 would be securities owned by National Bank of North</p> <p>14 America?</p> <p>15 A. No, not owned. Being cleared through</p> <p>16 there.</p> <p>17 Q. So this document --</p> <p>18 A. It's not National Bank of North America.</p> <p>19 That's a client of ours. You know, we're not buying</p> <p>20 and selling the stock for National Bank of North</p> <p>21 America.</p> <p>22 Q. Okay.</p> <p>23 A. We're buying it for customers, transactions</p> <p>24 being cleared through that account.</p> <p>25 Q. Okay. So this is -- you're saying this</p>	<p style="text-align: right;">Page 601</p> <p>1 Q. And for the capacity code, do you see the</p> <p>2 number two?</p> <p>3 A. Yes.</p> <p>4 Q. And that -- those are trades where you're</p> <p>5 acting as principal; right?</p> <p>6 A. Correct, yes.</p> <p>7 MR. KRATENSTEIN: In other words, that's</p> <p>8 what the capacity code means, two equals principal?</p> <p>9 MS. FEIN: That's right.</p> <p>10 THE WITNESS: You have to look at the back</p> <p>11 of the confirmation to see that.</p> <p>12 Q. (By Ms. Fein) The customer listed is</p> <p>13 George Scheer Special. Do you see that information?</p> <p>14 A. Yes.</p> <p>15 Q. And where it says we sold, does it mean</p> <p>16 that your --</p> <p>17 A. Sold is from our principal account.</p> <p>18 Q. Okay. So where -- can you explain to me</p> <p>19 kind of how this trade would end up in your</p> <p>20 principal account before it got to the customer</p> <p>21 statement?</p> <p>22 A. We are selling the stock. Typically on an</p> <p>23 agency transaction it would say -- it would refer to</p> <p>24 what the customer bought and sold. This would have</p> <p>25 confused Dubinsky.</p>
<p style="text-align: right;">Page 600</p> <p>1 document shows the clearing that --</p> <p>2 A. It's showing the activity that flowed</p> <p>3 through that account.</p> <p>4 Q. Okay. So they were not an IA customer of</p> <p>5 yours; right?</p> <p>6 A. No.</p> <p>7 MS. FEIN: Okay.</p> <p>8 MR. KRATENSTEIN: Thank you very much.</p> <p>9 (Trustee's Exhibit Number 16 was marked</p> <p>10 for identification.)</p> <p>11 Q. (By Ms. Fein) I'm marking as Exhibit 16 a</p> <p>12 document I'm about to hand to you that's being</p> <p>13 marked as Exhibit 16. Do you recognize what kind of</p> <p>14 document this is?</p> <p>15 A. It's a customer confirmation.</p> <p>16 Q. Do you see, can you read the trade date</p> <p>17 there?</p> <p>18 A. 1983, 11-11-83.</p> <p>19 Q. And the settlement date looks like</p> <p>20 11-18-83; is that right?</p> <p>21 A. Uh-huh, yes.</p> <p>22 Q. Under the security description would you</p> <p>23 agree that it's showing a preferred -- preferred</p> <p>24 convertible security?</p> <p>25 A. Right, yes.</p>	<p style="text-align: right;">Page 602</p> <p>1 Q. I'm not confused about that point. Let me</p> <p>2 back up.</p> <p>3 A. Okay.</p> <p>4 Q. My only question is would this -- where</p> <p>5 would this trade have originated on the market?</p> <p>6 A. Well, to begin --</p> <p>7 Q. Like who would have been the trader in your</p> <p>8 business or elsewhere?</p> <p>9 A. I don't know who the trader could have</p> <p>10 been. Typically it depends upon the transaction.</p> <p>11 The transaction could have been we had bought the</p> <p>12 stock first, you know. We could have had it in</p> <p>13 inventory, which would have appeared in one of the</p> <p>14 firm's trading accounts or in our investment</p> <p>15 account. And then we would sell it from a trading</p> <p>16 account or investment account to the client as</p> <p>17 principal.</p> <p>18 Q. Okay.</p> <p>19 A. That's -- it could be any number of -- or</p> <p>20 we can go out and buy it into this -- buy it from</p> <p>21 the street, you know, and then it flows from Goldman</p> <p>22 Sachs, who's a market maker, you know, selling it to</p> <p>23 us. And I could originate the trade, according if</p> <p>24 Goldman Sachs's market making department, and buy</p> <p>25 the stock.</p>

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<p>1 So it goes from step one, from Goldman, 2 who's selling it as principal to Madoff, who's 3 buying it as principal, and Madoff in turn is 4 selling it from my principal account to the customer 5 account. 6 (Trustee's Exhibit Number 17 was marked 7 for identification.) 8 Q. (By Ms. Fein) Okay. I'm going to mark or 9 I'm going to show you what's been marked as 10 Trustee's 17. 11 MS. DASARO: I just want to make sure. 12 MR. KRATENSTEIN: Thank you. 13 MS. CHAITMAN: Thank you. 14 Q. (By Ms. Fein) Is this another one of the 15 stock record documents that your firm maintained? 16 A. Yes. 17 Q. And would this be for house 17, your IA 18 customers? 19 A. I can't read the -- 20 Q. Look at the -- 21 MS. CHAITMAN: Page 63, 11-30-63? Is that 22 the date? 23 MS. FEIN: No. If you look at the -- it's 24 '83, yes. 25 THE WITNESS: This is house 17. This is</p>	<p>1 Q. -- do you see a transaction in -- I'm 2 sorry -- in the middle of the page in International 3 Harvester? 4 A. Yes. 5 Q. Okay. I'd like you to look again on this 6 page. 7 A. Uh-huh. 8 Q. The International Harvester transaction. 9 A. Right. 10 MS. CHAITMAN: Is this 750? 11 MS. FEIN: This is 750, yes. 12 MS. CHAITMAN: Okay. 13 Q. (By Ms. Fein) Preferred series A 14 convertible, \$3? 15 A. Uh-huh. 16 Q. Do you see that transaction? 17 A. Right. 18 Q. If you look about six lines up from the 19 bottom, there is the customer that we looked at, 20 George Scheer Special. Do you see that? 21 A. Right. 22 Q. Actually, look down here. I know it's 23 listed a couple of different places, but I'm 24 referring to the one right down at the bottom. 25 A. I see. Okay.</p>
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<p>1 house 17, so -- 2 Q. (By Ms. Fein) Okay. Here, just to be 3 clear, will you read the title of the document 4 starting with the house 17? 5 A. Stock record summary through 11-10-83. 6 Q. Okay. 7 A. Or 11-30-83. I can't read it. 8 Q. Okay. Yeah. I think it's 11-30. 9 A. Yeah, 11-30-83. 10 Q. Okay. For your IA customers were these 11 typically run at month end? 12 A. Yes. 13 Q. These type of reports? 14 A. I'm assuming if it says through 11-30-83, 15 that would be the month end. 16 Q. For this report; right? 17 A. For this report. 18 Q. I'm asking you if you know more generally 19 if for house 17 these reports were typically run at 20 the end of the month? 21 A. I assume so, but I can't be sure. 22 Q. Okay. I'm going to show you a different 23 page, page 750. And if you look toward the bottom 24 of the page -- 25 A. Uh-huh.</p>	<p>1 Q. Six lines up. Okay. Do you see the amount 2 for this looks like 13,388 -- 3 A. Right. 4 Q. -- long? 5 A. Uh-huh. 6 Q. And the trade date is 11-18-83? 7 A. Uh-huh. 8 Q. If you look at what's been marked as 9 Exhibit 16, would you agree that this trade shown on 10 the first page of Exhibit 16 is also 13,388 shares 11 for George Scheer Special? 12 A. Right. 13 Q. The security description is the same; 14 right? 15 A. Uh-huh. 16 Q. Okay. So do you think this is -- do you 17 think that the amount shown on Exhibit 17, the 18 transaction shown on Exhibit 17 for George Scheer is 19 the same as the one shown on Exhibit 16? 20 A. I want to make sure I can find it. 21 Q. Sure. 22 A. 13,388. The shares seems to be the same. 23 Q. And this -- 24 A. And the monies. 25 Q. -- date listed looks like November 18th,</p>

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<p style="text-align: right;">Page 607</p> <p>1 1983 --</p> <p>2 A. Right, okay.</p> <p>3 Q. -- is the settlement date. So does this</p> <p>4 transaction appear to match the -- the transaction</p> <p>5 in Exhibit 16 appear to march the report in</p> <p>6 Exhibit 17?</p> <p>7 A. The shares match. I don't see monies.</p> <p>8 Q. Right, no. I don't think that they put it</p> <p>9 on this report.</p> <p>10 A. Okay, right, right.</p> <p>11 Q. Okay. If you go to the next page of</p> <p>12 Exhibit 17, this is the end of that same</p> <p>13 transaction. Do you see who's on -- who's listed at</p> <p>14 the bottom of the page?</p> <p>15 A. Correct.</p> <p>16 Q. What entity is listed?</p> <p>17 A. National Westminster Bank. Is that what</p> <p>18 it's saying?</p> <p>19 Q. Yes. What's your understanding of how</p> <p>20 National Westminster Bank was related to this trade?</p> <p>21 A. I'm assuming the trade must have cleared</p> <p>22 through the bank.</p> <p>23 Q. Okay. Do you see the account number?</p> <p>24 There's two entries and two account numbers for</p> <p>25 National Westminster Bank that are listed at the</p>	<p style="text-align: right;">Page 609</p> <p>1 thought it was most certainly a month-end report</p> <p>2 based on that, but the transactions listed on this</p> <p>3 stock record summary, if you look at other</p> <p>4 transactions on the page, they also have National</p> <p>5 Westminster Bank USA --</p> <p>6 A. Uh-huh.</p> <p>7 Q. -- listed underneath each security.</p> <p>8 A. Okay.</p> <p>9 Q. Would it be typical that all the</p> <p>10 transactions would have the same clearing bank for</p> <p>11 all the transactions that would be listed on a</p> <p>12 single for every customer account?</p> <p>13 A. Could be. It depends upon -- you know, the</p> <p>14 answer is I have no idea why we would choose one</p> <p>15 bank or the other. Again, it depends upon, you</p> <p>16 know, any number of things. I don't know. It's not</p> <p>17 something that I would be familiar with.</p> <p>18 Q. Right. We went over a number of banks</p> <p>19 earlier, though, and this report only lists one. So</p> <p>20 I was just trying to understand why it might be that</p> <p>21 there's only one listed?</p> <p>22 A. That could be -- I don't know. I mean, it</p> <p>23 could be typically, you know, why they use one</p> <p>24 particular bank or clearing agent or broker depends</p> <p>25 upon the fee structure, depends upon whether they</p>
<p style="text-align: right;">Page 608</p> <p>1 bottom of the transaction?</p> <p>2 A. Right.</p> <p>3 Q. The account number for the first reads</p> <p>4 299000010 and the second, 6000020. Do you see that?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Do you know why there would be two entries</p> <p>7 here for National Westminster Bank?</p> <p>8 A. I don't have a clue.</p> <p>9 Q. Okay.</p> <p>10 A. They must have two different types of trade</p> <p>11 clearing accounts that can handle it.</p> <p>12 Q. Okay. So we know how we had discussed</p> <p>13 whether this would be a month-end report. The</p> <p>14 transaction that we're looking at is dated</p> <p>15 November 18th and this report is dated</p> <p>16 November 30th.</p> <p>17 And there are many other transactions</p> <p>18 listed on here, but do you think that that would</p> <p>19 mean it would encompass at least more than just the</p> <p>20 day, November 30th? At least it has other days of</p> <p>21 the month that are also listed here?</p> <p>22 MS. CHAITMAN: Objection.</p> <p>23 Q. (By Ms. Chaitman) Other transactions?</p> <p>24 A. I'm not sure.</p> <p>25 Q. Okay. That's fine. I don't know if you</p>	<p style="text-align: right;">Page 610</p> <p>1 were a market maker also in that, depends upon -- I</p> <p>2 don't know the answer to that question.</p> <p>3 Q. Okay. That's fine. The transaction we</p> <p>4 were looking at in Exhibit 16 was a transaction you</p> <p>5 did as principal; right?</p> <p>6 A. Mostly all of ours were principal, right.</p> <p>7 Q. So if National Westminster was shown as the</p> <p>8 clearing firm --</p> <p>9 A. Right.</p> <p>10 Q. -- would that mean National Westminster --</p> <p>11 it wouldn't mean National Westminster was the</p> <p>12 counterparty to the transaction; right?</p> <p>13 A. No.</p> <p>14 Q. Okay.</p> <p>15 A. I mean, it theoretically could be, but I</p> <p>16 don't know. Again, they may have been a market</p> <p>17 maker. They may have been a -- I don't know the</p> <p>18 answer to that.</p> <p>19 Q. You were a self-clearing firm; right?</p> <p>20 A. Correct.</p> <p>21 Q. So I guess I'm trying to understand why all</p> <p>22 the transactions that are shown on the report would</p> <p>23 have not cleared through you or wouldn't have</p> <p>24 gone --</p> <p>25 A. Because they're not going to -- because</p>

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<p style="text-align: right;">Page 611</p> <p>1 they're not going to -- we don't convert ourselves. 2 In other words, we don't handle the conversion of 3 the security. We don't handle the delivering the 4 bond to the clearing agent to actually exchange it 5 for stock. In other words, that -- we don't have an 6 arrangement with -- with the conversion agent to 7 actually do that. 8 MS. FEIN: Okay, okay. We can move on. 9 I'm going to show you two documents, Trustee's 18, 10 Trustee's 19. 11 (Trustee's Exhibit Numbers 18 and 19 were 12 marked for identification.) 13 MR. KRATENSTEIN: Just want to make sure I 14 get these right. So which is 18? Ends in 393? 15 MS. FEIN: That's correct, yes. 16 MR. KRATENSTEIN: Eighteen is 393? 17 MS. FEIN: That's right. Here, let me get 18 this out of your way. 19 Q. (By Ms. Fein) Do you recognize? 20 A. Not really. It says -- it says cash and 21 securities blotter. Is that what -- 22 Q. Uh-huh. 23 A. Right. 24 Q. Are you looking at Exhibit 18 then? 25 A. Yes.</p>	<p style="text-align: right;">Page 613</p> <p>1 MR. KRATENSTEIN: Object to form. 2 THE WITNESS: No. 3 MS. FEIN: Okay. 4 THE WITNESS: I don't even know what they 5 were used for. 6 Q. (By Ms. Fein) Okay. I'm going to ask a 7 couple of questions about the Sage accounts. Paul 8 Koenigsberg was an accountant; right? 9 A. Yes. 10 Q. And he -- we looked at some letters where 11 it appeared that he did work for the Sages; right? 12 A. I'm assuming he did. I said I don't know 13 whether Paul -- 14 Q. Right. 15 A. Was Paul Koenigsberg or could have been 16 Paul somebody else. 17 Q. Okay. Was Paul Koenigsberg an accountant 18 for other BLMIS customers? 19 A. Yes. 20 Q. Was he an accountant for Carl Shapiro? 21 A. Yes. 22 Q. Was he an accountant for Norman Levy? 23 A. At one -- he was an accountant for them, 24 for Norman Levy in the later years. 25 Q. Okay.</p>
<p style="text-align: right;">Page 612</p> <p>1 Q. Okay. Both documents show roll number and 2 then contents and then documents at the top of the 3 page. Do you see that? 4 A. Uh-huh. 5 Q. Okay. If you look at Exhibit 19, do you 6 see -- can you turn the -- look at the second page 7 of it ending in 396. Can you read the note at the 8 bottom of the page, the handwritten note? 9 A. Do not microfilm trading blotters? 10 Q. Yeah. And the line right above it. 11 A. As per BLM. 12 Q. Okay. Do you -- does BLM refer to you? 13 A. I would assume so. 14 Q. Do you know whose handwriting this is? 15 A. No. 16 Q. If you go back to Exhibit 18, other page -- 17 A. Uh-huh. 18 Q. -- do you see at the bottom of the page 19 where it says shred the Xs only -- 20 A. Okay. 21 Q. -- the handwritten note? Do you know whose 22 handwriting that is? 23 A. No. 24 Q. Do you know why you would shred cash and 25 securities blotters during this time period?</p>	<p style="text-align: right;">Page 614</p> <p>1 A. And same thing with -- who's the other one 2 you asked? 3 Q. Carl Shapiro. 4 A. Carl Shapiro, Norman Levy, yes. Their 5 accountants had died, so they switched over. And 6 then in -- Shapiro moved from Price Waterhouse to -- 7 because the partner that handled Price Waterhouse 8 moved to London. So he took Paul Koenigsberg on as 9 an accountant. And Levy's accountant died and he 10 moved over to Paul Koenigsberg. 11 Q. Did Carl Shapiro and Norman Levy have short 12 against the box accounts with you? 13 A. Yes. 14 Q. Did Annette handle some of the 15 correspondence and other activity related to those 16 accounts? 17 A. Yes. 18 Q. Were Carl Shapiro and Norman Levy two of 19 the customers you identified as having backdated 20 transactions in their accounts before 1992? 21 A. Well, let me make sure you understand 22 backdating accounts because backdating accounts 23 occur in a number of ways. One of them was -- well, 24 there's a -- backdating accounts can refer to an as 25 of transaction. As a market making firm, it's a</p>

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<p style="text-align: right;">Page 615</p> <p>1 very common occurrence to have to adjust both a 2 price and a date on a confirmation based upon 3 typically an error that is being made by the market 4 making firm or the originating firm, meaning like 5 Schwab. Schwab gives us an order to buy and sell 6 stock from a particular customer. 7 And either Schwab makes an error or his 8 customer makes an error as to doing the trade on the 9 wrong day or the wrong time or the price. And then 10 there's usually a discussion that takes place 11 between both parties. And then a decision is made 12 to put the trade back to a certain date and that's 13 what it refers to as an as of transaction. 14 So you're adjusting it and the error might 15 be -- might be the market maker or it might be the 16 originating broker who gave us the order. That's 17 one. Then there is the backdating trade where there 18 is a dispute between the customer and myself. 19 And then, of course, there's the totally 20 illegal transaction of backdating a transaction, 21 which is what -- what the -- I don't know whether it 22 was Dubinsky or Picard that happened, but I had 23 explained backdating trades to -- in the past. And 24 I don't know. You'd have to -- it depends upon 25 which transaction.</p>	<p style="text-align: right;">Page 617</p> <p>1 there was a lot of discussions whether it was the 2 right thing to do, but they wanted to do it -- 3 Q. Okay. 4 A. -- because of tax break. And then there 5 were other meetings that they came up just because 6 they were in the area. And the family was -- I 7 mean, I was friendly with the mother and the family, 8 so they felt free to come up. And also they said 9 that they came up to visit with Annette depending 10 upon -- they were not necessarily unique. And then 11 they would come and visit me to say hello. 12 Q. Okay. And did you have a good sense of 13 when that meeting took place, the one you testified 14 about directed trading? 15 A. I was trying to think of that, you know, 16 myself. I don't remember. There was -- there were 17 meetings and I know as recently as the 2000s. 18 And then there certainly must have been 19 meetings prior to that depending upon -- you can see 20 yourself depending upon when it started, 21 transactions changed when it went from a convertible 22 bond arbitrage account to a split strike account and 23 then to an account where they were just doing tax 24 planning and changed the style of trade they wanted 25 to do.</p>
<p style="text-align: right;">Page 616</p> <p>1 Q. Okay. 2 A. But a backdating trade in itself doesn't on 3 the face of it because you are backdating a trade by 4 adjusting a price or the date, but it doesn't 5 necessarily on the face mean it's an illegal trade. 6 Q. No, and I didn't ask that. 7 A. Okay. 8 Q. I was actually just asking about if Carl 9 Shapiro and Norman Levy were two of the customers 10 that had those transactions? 11 A. Yes, yes. 12 MS. FEIN: Okay. That was my question. 13 MR. KRATENSTEIN: I'm going to object to 14 the form of that question. 15 Q. (By Ms. Fein) Okay. You testified about a 16 meeting with members of the Sage family yesterday? 17 A. Yes. 18 Q. How many meetings do you remember with 19 them? 20 A. A number of meetings, you know. As to how 21 many, I don't know. It depends upon -- you know, I 22 remember, you know, the meeting where they wanted to 23 change the strategy, where they wanted to make the 24 decisions themselves. That happened. That was one 25 meeting I remember because it was a meeting that</p>	<p style="text-align: right;">Page 618</p> <p>1 Q. Okay. But I guess you're saying then 2 before that meeting you wouldn't have taken trade 3 direction from the Sages; right? 4 MR. KRATENSTEIN: Object to form. Go 5 ahead. 6 THE WITNESS: Depends upon whether the 7 father was alive and he was running the account with 8 me or -- I mean, they were accountants, the family, 9 for a very long period of time. 10 Q. (By Ms. Chaitman) Okay. But it wasn't 11 your typical practice to take trade direction; 12 right? 13 A. That's correct. 14 Q. Okay. That was my -- what I was trying to 15 get at. Okay. I'd like you to take a look at a 16 document we reviewed yesterday, Exhibit 85. 17 MR. KRATENSTEIN: Hang on a minute. 18 MS. FEIN: Oh, sure. 19 MR. KRATENSTEIN: Okay. Go ahead. 20 Q. (By Ms. Fein) In the second paragraph we 21 went over some language yesterday and I'd like to 22 ask you about one sentence, but let's look a little 23 earlier. Do you see this sentence says as of the 24 last statements we received in March the accounts 25 were a little off of the usual benchmark?</p>

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<p style="text-align: right;">Page 619</p> <p>1 A. Correct.</p> <p>2 Q. Can you read the next two sentences after</p> <p>3 that?</p> <p>4 A. I can't find them.</p> <p>5 Q. Oh, so the next one would be since then our</p> <p>6 main holding, eBay, has dropped significantly.</p> <p>7 A. Right, okay. I see it.</p> <p>8 Q. And then the next, as that holding is a</p> <p>9 long-term one, I was hoping you had shorted it</p> <p>10 against the box a while back. Do you see that?</p> <p>11 A. Yes, uh-huh.</p> <p>12 Q. That statement is in the past tense; right?</p> <p>13 A. I was hoping you had shorted it against the</p> <p>14 box, okay.</p> <p>15 Q. It's referring to something that would have</p> <p>16 happened before you got this letter; right?</p> <p>17 MR. KRATENSTEIN: Objection to the form of</p> <p>18 the question.</p> <p>19 THE WITNESS: Yes. I think what they're</p> <p>20 referring to is sometimes even if I had felt that</p> <p>21 they should have been sold regardless of what they</p> <p>22 had -- they were doing tax planning, obviously,</p> <p>23 shorting against the box to adjust whether they were</p> <p>24 going to get long-term gain, short-term gains and so</p> <p>25 on and depending upon when you closed out the</p>	<p style="text-align: right;">Page 621</p> <p>1 last sentence of the first paragraph, with respect</p> <p>2 to other positions in these accounts please note</p> <p>3 that Pharmacia will become long-term this January.</p> <p>4 Do you see that sentence?</p> <p>5 A. Yes.</p> <p>6 Q. And then do you see just under that unless</p> <p>7 you deem that these stocks must be shorted prior to</p> <p>8 these dates due to various considerations, it would</p> <p>9 be to our tax benefit that these positions not be</p> <p>10 shorted?</p> <p>11 A. Right.</p> <p>12 Q. That's not a direction to you about what to</p> <p>13 do with the trade; right?</p> <p>14 MR. KRATENSTEIN: Object to form.</p> <p>15 Q. (By Ms. Fein) In other words, this is left</p> <p>16 in your discretion; correct?</p> <p>17 MR. KRATENSTEIN: Object to the form.</p> <p>18 THE WITNESS: I assume that's what they're</p> <p>19 saying, right.</p> <p>20 Q. (By Ms. Fein) Okay. I just want to look</p> <p>21 at two of the documents we went through. These</p> <p>22 exhibits, Exhibits 70 and 72, were looked at in</p> <p>23 connection with this same letter. And on Exhibit 70</p> <p>24 do you see an R. J. Reynolds Tobacco HLDS?</p> <p>25 A. Right.</p>
<p style="text-align: right;">Page 620</p> <p>1 transaction, in other words, covered the short, that</p> <p>2 would trigger a tax event. So if, in fact -- again,</p> <p>3 I'm assuming because this -- you know, if, in fact,</p> <p>4 they originally wanted to keep the trade open but</p> <p>5 then there was a market event that happened, you</p> <p>6 know, then I felt that it wasn't -- it didn't make</p> <p>7 any sense to worry about the tax treatment because</p> <p>8 if they -- if I didn't go short against the box, the</p> <p>9 stock was going to go down, I would pay no attention</p> <p>10 to it.</p> <p>11 Q. Right.</p> <p>12 A. Technically a client could call me up and</p> <p>13 say to me, which did happen at the time, well, you</p> <p>14 shouldn't have -- you should have followed my</p> <p>15 instructions even though you would have lost money</p> <p>16 for me to do that. That's not an unusual situation.</p> <p>17 So I don't remember what happened here, but that's</p> <p>18 probably what happened.</p> <p>19 Q. Okay. All right. So we can look at</p> <p>20 Exhibit 69.</p> <p>21 A. Uh-huh.</p> <p>22 Q. This is another of the letters we reviewed</p> <p>23 yesterday; right?</p> <p>24 A. Right.</p> <p>25 Q. Do you see -- it's a long sentence, but the</p>	<p style="text-align: right;">Page 622</p> <p>1 Q. Okay. And what date is that transaction?</p> <p>2 A. January 13th.</p> <p>3 Q. And it's 9,000 shares purchased?</p> <p>4 A. Yes.</p> <p>5 MR. KRATENSTEIN: What year was that?</p> <p>6 THE WITNESS: '03.</p> <p>7 Q. (By Ms. Fein) Okay. And do you see the</p> <p>8 account number listed, 1S004-7?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And you were shown the trade</p> <p>11 confirmation in Exhibit 72 in connection with this</p> <p>12 customer statement?</p> <p>13 A. Right, uh-huh.</p> <p>14 Q. What's the date of the trade indicated on</p> <p>15 this confirmation on the first page?</p> <p>16 A. 12-12-03.</p> <p>17 Q. And what's the date indicated on the second</p> <p>18 page of the confirmation?</p> <p>19 A. 8-28-03.</p> <p>20 Q. Okay. Can you see either of those trades</p> <p>21 on the customer statement that we reviewed in</p> <p>22 Exhibit 70, any of the -- either of those trade</p> <p>23 dates?</p> <p>24 A. I see that Reynolds has a trade date of</p> <p>25 January 13th.</p>

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<p style="text-align: right;">Page 623</p> <p>1 Q. Okay. So no?</p> <p>2 A. And what's the other one? Broadcom?</p> <p>3 Q. Yeah. No. We're just looking at the RJR</p> <p>4 Reynolds trade.</p> <p>5 A. Okay.</p> <p>6 Q. If you look on the trade confirmation,</p> <p>7 Exhibit 72, do you see the account number is</p> <p>8 1S0004-3?</p> <p>9 A. On this, yes.</p> <p>10 Q. So this is a different account?</p> <p>11 A. Uh-huh.</p> <p>12 Q. These confirmations pertain to a different</p> <p>13 account and a different time frame; right?</p> <p>14 A. Right.</p> <p>15 Q. They're not the ones that are shown on the</p> <p>16 statement in Exhibit 70; right? And take your time.</p> <p>17 A. Okay.</p> <p>18 Q. Do you agree?</p> <p>19 A. The statement is -- it says -- I'm not --</p> <p>20 you lost me.</p> <p>21 Q. So the statement is for accounts ending in</p> <p>22 dash seven; right?</p> <p>23 A. Right.</p> <p>24 Q. But the confirmations are for an account</p> <p>25 ending in dash three; right?</p>	<p style="text-align: right;">Page 625</p> <p>1 Q. The amounts are different?</p> <p>2 A. Yes.</p> <p>3 Q. And the accounts are different?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. You mentioned earlier today meeting,</p> <p>6 a proffer meeting with the United States Attorney's</p> <p>7 Office. Do you remember that reference?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Do you recall when that meeting took</p> <p>10 place?</p> <p>11 A. There were two meetings with the U.S.</p> <p>12 Attorney. One was the proffer agreement, which was,</p> <p>13 I think, I believe the first meeting. That took</p> <p>14 place down at the U.S. Attorney's office, which was</p> <p>15 made shortly after my arrest. Then there was a</p> <p>16 second meeting that took place in my apartment where</p> <p>17 the U.S. Attorney was not present.</p> <p>18 He was on a speakerphone. And that</p> <p>19 included a whole length of proffer agreement</p> <p>20 meeting. There were all sorts of people there in my</p> <p>21 apartment.</p> <p>22 Q. Do you remember did the meeting take place</p> <p>23 in a conference room in the United States Attorney's</p> <p>24 office, the December meeting?</p> <p>25 A. Yes, yes.</p>
<p style="text-align: right;">Page 624</p> <p>1 A. Correct.</p> <p>2 Q. And the trade date shown on Exhibit 72 is</p> <p>3 December 12th, 2003?</p> <p>4 A. Uh-huh.</p> <p>5 Q. And August 28th, 2003?</p> <p>6 A. Uh-huh.</p> <p>7 Q. But the customer statement that was shown</p> <p>8 is for January 2003; right?</p> <p>9 A. Right.</p> <p>10 Q. Okay. So these transactions don't match</p> <p>11 the statement in the confirm; right?</p> <p>12 A. You know, to tell you the truth, you've</p> <p>13 sort of lost me on this whole thing.</p> <p>14 Q. Okay.</p> <p>15 A. I'm assuming if you told me they don't</p> <p>16 match, they don't match.</p> <p>17 Q. Well, the dates are different and the trade</p> <p>18 -- the number of the trade is different and the</p> <p>19 accounts are different right?</p> <p>20 A. Okay. All right.</p> <p>21 Q. Okay. Well, I'm asking you.</p> <p>22 A. Ask me what?</p> <p>23 Q. I'm asking you do you agree that the trade</p> <p>24 dates are different?</p> <p>25 A. Yes, yes.</p>	<p style="text-align: right;">Page 626</p> <p>1 Q. Do you remember how long it was?</p> <p>2 A. A long time. Started in the morning and</p> <p>3 went through lunch.</p> <p>4 Q. Okay. I'm going to mark -- I'm going to</p> <p>5 show you what's been marked as Exhibit --</p> <p>6 MR. KRATENSTEIN: What number?</p> <p>7 MS. FEIN: 20.</p> <p>8 MS. CHAITMAN: Do you have a copy for</p> <p>9 Peter?</p> <p>10 MS. FEIN: Yeah.</p> <p>11 (Trustee's Exhibit Number 20 was marked</p> <p>12 for identification.)</p> <p>13 Q. (By Ms. Chaitman) If you look at the</p> <p>14 bottom of the first page there's a date listed,</p> <p>15 investigation on 12-16-2008, the bottom of the first</p> <p>16 page?</p> <p>17 A. Yes.</p> <p>18 Q. Does that sound about right when the</p> <p>19 meeting took place that you remember?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So this would be the same week, a</p> <p>22 few days after you confessed; right?</p> <p>23 A. Correct.</p> <p>24 Q. We're just going to take a look at a couple</p> <p>25 of individual statements here.</p>

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<p style="text-align: right;">Page 627</p> <p>1 MS. CHAITMAN: I just want to put on the 2 record that I object to any questioning about this 3 document because, number one, it's obviously 4 inadmissible for good reasons. Number two, it's 5 redacted more than it's not redacted and it's 6 impossible to know what -- obviously, we have no 7 idea what's said in the redacted sections. 8 And I think for you to ask Mr. Madoff 9 about something that hasn't been redacted, assuming 10 this is even a legitimate document -- for example, 11 I'm sure that you're going to ask him about what 12 hasn't been redacted on page three, but it may be 13 that in the blacked out part underneath it, it 14 contradicts what's said and what's there. 15 MS. FEIN: Understood. If we had the 16 full, unredacted document, that would be our 17 preference as well. 18 MS. CHAITMAN: Right, but I think any 19 questioning about this document is a waste of time 20 because it's -- 21 MS. FEIN: I understand your objection. 22 MS. CHAITMAN: Okay. 23 Q. (By Ms. Fein) If you turn to page seven of 24 the document, the pages are marked at the top. 25 A. Okay.</p>	<p style="text-align: right;">Page 629</p> <p>1 is an accurate reflection of your business? 2 A. Madoff began a retail business in about 3 1960. 4 Q. Yes. 5 A. He had about a dozen clients, all of whom 6 were family and friends, yes. 7 Q. Do you recall making that statement at your 8 proffer meeting? 9 A. Yes. 10 Q. The next sentence after that, can you read 11 that? 12 MR. GOLDMAN: That's what I'm going to 13 object to. You know, this is a memorialization of 14 what someone thinks they heard. We don't know who 15 wrote it; okay? There are certain characterizations 16 in here such as that which are his conclusions or 17 her conclusions, whoever wrote it. And I think it's 18 unfair to ask him. 19 If there's something in here that you want 20 to ask him whether he actually said something, I 21 don't have an objection to that. And if you could 22 point to where he said it in the report, that's 23 fine; but I'm going to object to these 24 characterizations and then asking him whether those 25 are correct or not.</p>
<p style="text-align: right;">Page 628</p> <p>1 Q. Do you see the first sentence? 2 A. When Madoff began a retail business in 19 3 -- yes. 4 Q. Uh-huh. Do you agree with that statement? 5 A. Yes. 6 MS. FEIN: Okay. 7 MR. GOLDMAN: Read that question back? 8 Q. (By Ms. Fein) Sure. The first statement, 9 Madoff began a retail business in about 1960. He 10 had about a dozen clients, all of whom were family 11 and friends. Do you agree with the statement? 12 MR. GOLDMAN: Well, I'm going to object to 13 it. It says it morphed into a fraud. 14 MS. FEIN: I didn't -- I didn't ask about 15 that sentence. 16 MR. KRATENSTEIN: First sentence, just 17 first sentence. 18 MR. GOLDMAN: Oh, I'm sorry. 19 MS. FEIN: I only asked about the first 20 sentence. Sorry. 21 MR. KRATENSTEIN: Do you want to reask the 22 question if he agrees with that sentence, the first 23 sentence? 24 Q. (By Ms. Fein) Sure. Mr. Madoff, do you 25 agree to the first sentence on page seven, that that</p>	<p style="text-align: right;">Page 630</p> <p>1 MS. FEIN: I understand. 2 MR. GOLDMAN: Okay. 3 MS. FEIN: I understand. I'm going to ask 4 about the statements that are here. 5 MR. GOLDMAN: Okay. 6 Q. (By Ms. Fein) And I just want to really 7 know if you recall making the statements at the 8 meeting? 9 MR. GOLDMAN: I want to make sure, though, 10 when you ask him did he make the statement and if 11 he -- I don't want -- what I object to is the 12 characterization that he's made the statement. I 13 haven't seen quotation marks anywhere in here that 14 Mr. Madoff said this. 15 MS. FEIN: Right. 16 MR. GOLDMAN: If you can point to that and 17 ask him, that's fine, but the other -- asking him 18 about someone else's conclusions I just think is 19 inappropriate. 20 MS. FEIN: Okay. Well, if I -- I don't 21 plan to ask -- 22 MR. GOLDMAN: And he'll answer 23 accordingly. Okay. 24 MS. FEIN: -- much more about that. It's 25 about whether he recalls making the statements that</p>

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<p>1 are here.</p> <p>2 MR. GOLDMAN: Okay.</p> <p>3 Q. (By Ms. Fein) So if you want to read the</p> <p>4 text on page seven. You don't have to read it out</p> <p>5 loud. You can read it to yourself, but I did want</p> <p>6 to ask. So the statement the retail business</p> <p>7 morphed into a fraud as time went by, do you recall</p> <p>8 making that statement at the proffer meeting?</p> <p>9 A. You're asking if I said in 1962 all the</p> <p>10 clients lost virtually their entire investment?</p> <p>11 Q. No. The sentence before that, the retail</p> <p>12 business morphed into a fraud as time went by.</p> <p>13 MR. GOLDMAN: Do you recall saying that?</p> <p>14 THE WITNESS: I don't remember saying</p> <p>15 that.</p> <p>16 MR. FEIN: Okay.</p> <p>17 MR. GOLDMAN: Okay. Let's go on.</p> <p>18 Q. (By Ms. Fein) Do you -- if you look down a</p> <p>19 bit on the page, so it refers to in 1962 Madoff's</p> <p>20 retail business was wiped out in the new issue</p> <p>21 collapse. And the following sentence, all his</p> <p>22 clients lost virtually their entire investment,</p> <p>23 which amounted to a total of \$30,000. Madoff felt</p> <p>24 he had to pay them back, so he borrowed \$30,000 from</p> <p>25 his father-in-law to do so. Do you recall making</p>	<p>1 that.</p> <p>2 Q. Okay.</p> <p>3 A. Where are we now?</p> <p>4 Q. Page four.</p> <p>5 A. So I have to go back?</p> <p>6 Q. Yes.</p> <p>7 A. Okay.</p> <p>8 Q. I think it's one more back. It's on the</p> <p>9 back, yep. There. The first sentence that is</p> <p>10 unredacted, the fraud entailed Madoff taking in</p> <p>11 funds from investors, holding those funds and paying</p> <p>12 them out to investors seeking redemptions. Do you</p> <p>13 recall making that statement?</p> <p>14 MS. CHAITMAN: I would suggest that you</p> <p>15 read through the whole unredacted portion, Bernie,</p> <p>16 before you respond.</p> <p>17 THE WITNESS: The fraud entailed Madoff</p> <p>18 taking in funds from investors, holding those funds</p> <p>19 and paying them out to investors seeking</p> <p>20 redemptions, essentially a Ponzi scheme.</p> <p>21 MR. GOLDMAN: See, the other part of the</p> <p>22 problem with that is that we don't have any dates.</p> <p>23 THE WITNESS: Yeah.</p> <p>24 MR. GOLDMAN: I don't know when the dates</p> <p>25 are.</p>
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<p>1 that statement?</p> <p>2 A. Yes.</p> <p>3 Q. His father-in-law was not pleased by this</p> <p>4 development. Madoff was able to pay all these</p> <p>5 clients back and start the market making business.</p> <p>6 Do you recall making that statement?</p> <p>7 A. Yes.</p> <p>8 Q. At about this time he took in new retail</p> <p>9 clients. These clients were also family and</p> <p>10 friends. Do you recall making that statement?</p> <p>11 A. Yes.</p> <p>12 Q. He began to falsely report returns of</p> <p>13 30 percent, 40 percent annual to these customers.</p> <p>14 Do you recall making that statement?</p> <p>15 A. Wait a minute. After this time he took in</p> <p>16 new retail clients. He had to falsely -- no. I did</p> <p>17 not say he had to falsely report returns of 30 to</p> <p>18 40 percent. Definitely didn't ever say that.</p> <p>19 Q. Okay. If you look at page four of the</p> <p>20 document, go back a couple of pages, my next</p> <p>21 questions are on page four.</p> <p>22 A. Okay. I'm still looking at that last</p> <p>23 question --</p> <p>24 Q. Sure.</p> <p>25 A. -- because I can't imagine having said</p>	<p>1 MS. FEIN: I'm just asking if he remembers</p> <p>2 making the statements. I can't make any. I was not</p> <p>3 involved in -- I was not -- yeah.</p> <p>4 MR. GOLDMAN: So I just think it's unfair</p> <p>5 ask him that question.</p> <p>6 MS. FEIN: I'm asking if he recalls the</p> <p>7 statements that are here and that's really it.</p> <p>8 MR. GOLDMAN: Okay, all right.</p> <p>9 THE WITNESS: Let's put it this way.</p> <p>10 Depending upon what period of time they were talking</p> <p>11 about, I could have made that statement because I'd</p> <p>12 made that statement a number of times since then;</p> <p>13 but I certainly was not talking about it, you know,</p> <p>14 in the early periods of time because I was very</p> <p>15 clear and forthright in everything I said at the</p> <p>16 proffer agreement and at the other meeting.</p> <p>17 And nothing has changed in my story. So I</p> <p>18 -- just the same reason I would not have mentioned</p> <p>19 anything about the 30 or 40 percent, I certainly</p> <p>20 could have said that, for example, in 1980s my</p> <p>21 clients were making 30 or 40 percent because that</p> <p>22 was what was common at that time when interest rates</p> <p>23 were 12 percent at that period of time.</p> <p>24 So I can tell you that referring to this</p> <p>25 proffer agreement, it was an absurdity. The</p>

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<p>Page 635</p> <p>1 questions that were asked by me, by people who I 2 knew knew the answer, you know, and, you know, it 3 was obvious that that they were trying to paint a 4 picture that was not the case. And I'm still pissed 5 off by it, quite frankly. 6 Q. I'm going to ask you about a couple more 7 questions. 8 MR. GOLDMAN: Okay. Ask the question. 9 Q. (By Ms. Fein) So the next sentence, you 10 just read the first two sentences. The next 11 sentence, customers received both monthly account 12 statements and trade confirmations reflecting trades 13 that never took place. Do you recall making that 14 statement at the proffer meeting? 15 A. No. 16 Q. Madoff began engaging in fraud in earnest 17 in the 1970s. The 1980s saw a large expansion in 18 the retail, i.e., fraudulent portion of the 19 business. Do you recall making that statement at 20 the meeting? 21 A. Let me go back and read it. I certainly 22 never said that fraud took place in the '70s because 23 it did not. In the 1980s there was a large 24 expansion in the retail business and in the, i.e., 25 parentheses, fraudulent. I assume that's not my</p>	<p>Page 637</p> <p>1 Q. Okay. The statement when Madoff first 2 began the retail business he did initially engage in 3 some actual trades. Soon, however, he began to 4 engage in fraud as to the entire retail business. 5 Do you recall making that statement? 6 A. No. Again, I assume if I'm reading this 7 correctly, this is somebody interpreting what I 8 said. 9 Q. Understood. Do you recall saying this at 10 the proffer meeting, though? I'm not saying that 11 it's verbatim. I'm asking if you recall discussing 12 this? 13 A. I remember discussing the fact the business 14 was small and also that I started -- I started a 15 retail business, discussing trade position, yes. 16 Was paying ridiculously high returns, no. I never 17 said that because they were not -- 18 Q. I'm only talking about the second 19 paragraph. I'm not asking about the first 20 paragraph. 21 A. Okay. When Madoff first began the retail 22 business, he initially engaged in some actual 23 trades. Again, that's someone interpreting what I 24 said. Began to engage in the fraud, no. Virtually 25 the entire life of the retail business was simply</p>
<p>Page 636</p> <p>1 statement. That's the interpretation statement 2 because why would they -- the fact that if I 3 understand English properly, when someone says with 4 parentheses, i.e., fraudulent, that's someone's 5 interpretation of what he claims I said was 6 fraudulent. 7 Q. Okay. 8 A. Which -- so I never said it was fraudulent. 9 Q. I'm just asking about your recollection. 10 Okay. 11 A. My recollection was I explained what was 12 happening in the business, but as far as the dates 13 are concerned, you know, I do not recall ever saying 14 that. 15 Q. Okay. The next sentence, as there was no 16 actual trading, nothing cleared through DTCC or any 17 clearing firm and the only records of the purported 18 trades are the paper confirmations. Do you recall 19 saying that at the proffer meeting? 20 A. No. I do not. 21 Q. If you turn back one page to page three, 22 the second paragraph on page three begins when 23 Madoff first began the retail business. Do you see 24 that sentence? 25 A. Uh-huh.</p>	<p>Page 638</p> <p>1 not trade. No, I don't recall saying this. 2 Q. Okay. And you were just reading the last 3 sentence on page three that's unredacted, for 4 virtually the entire life of the retail business? 5 Is that what you were referring to? 6 A. Not during -- not during an earlier period. 7 I was referring -- if I was saying that, I was 8 referring to post-'92 period. 9 Q. When you say if I was saying that, you mean 10 if you said -- 11 A. What I'm saying is that I never would have 12 said, you know, anything other than what I always 13 had said, that the fraud began in, you know, in the 14 post-'90 period. So I don't know -- and I have a 15 pretty good memory, so I do not remember saying 16 anything like that. 17 MR. GOLDMAN: Amanda, this is a 18 memorialization of the proffer on the 16th? Is that 19 what it is? 20 MS. FEIN: Yes. 21 MR. GOLDMAN: Okay. 22 Q. (By Ms. Fein) You mentioned that it made 23 you angry to think about this meeting somewhat; 24 right? 25 A. Excuse me?</p>

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<p>1 Q. You mentioned that it made you kind of 2 angry to think about this meeting; right? 3 MR. KRATENSTEIN: Object to form. 4 THE WITNESS: I'm angry because there were 5 interpretations here of what I said that were -- 6 were not true. I was very clear about what I said 7 and I was very forthright what I said. I would have 8 no reason to change that after the fact. 9 And the -- the way this -- what happened 10 at this meeting was a lot of the -- a lot of this 11 was someone asking me questions like saying so this 12 is what happened? And I had to go -- had to answer 13 back and say no, this is -- that is not what 14 happened. And they were asking me questions which 15 to me sounded totally ridiculous. 16 And as a matter of fact, I do remember 17 specifically turning to the two SEC people were 18 there who were very well aware of me and my business 19 and I looked at them and said help me out here. I 20 mean, do you really expect me to answer these 21 questions, explain what is a short sale, what does a 22 market maker do? 23 And it was like, you know, a smoking gun 24 type of thing. And yeah, I was pissed off at it 25 because I knew, you know, that it made no sense.</p>	<p>1 Q. Well, the statements, I won't represent 2 everything that we looked at, but you'll agree that 3 some of the statements we looked at didn't say 4 anything about market making certainly or short 5 sales; right? 6 MR. GOLDMAN: We don't know that because 7 so much is redacted. 8 MS. FEIN: I'm saying just the statements 9 that we looked at. 10 MS. CHAITMAN: But it's a meaningless 11 question due to the fact that 90 percent of it is 12 redacted. 13 MS. FEIN: If you want to object to the 14 question, you can object to the question. 15 MR. KRATENSTEIN: Objection. 16 THE WITNESS: Yes. I mean, to me this 17 document is nothing. You know, it's just -- look, 18 I've always felt that this -- you know, this whole 19 thing, the GAO report -- not the GAO report. I had 20 no problem with the GAO report. I had a problem 21 with Dubinsky's report and Picard. 22 Picard has made a whole series of 23 statements which the GAO report, his own report 24 proved totally, you know, false, like the firm used 25 it as a piggy bank, that I never made any money, the</p>
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<p>1 And they were embarrassed when I turned and asked 2 them. I mean, for someone who was a senior person 3 at the SEC to sit there, you know, looking very 4 quiet and sheepish when Marc Litt, who knows nothing 5 at all, who is the prosecutor, about the securities 6 business or at least claimed not to know, you know, 7 asked me what is a short sale, what does a market 8 maker do? You know, so you sold stock to a customer 9 that you didn't own? 10 Q. (By Ms. Fein) So the SEC -- you're saying 11 and the SEC people in the room knew you. They knew 12 of your reputation? 13 A. Of course. There was no one in the 14 industry that didn't know me, you know, at that 15 time. You know, so -- 16 Q. Yeah. Well, you had a very good reputation 17 in the industry; right? 18 A. Before I -- before this fiasco, yes, but it 19 was in every aspect of the industry. So it was -- 20 it just -- it infuriated me when David went through 21 this theater the other day. So did the SEC lie? 22 Did the FBI lie he said? I said I didn't say that 23 they lied. I said they misinterpreted, you know, 24 what I said or maybe they just don't understand 25 anything.</p>	<p>1 firm was never profitable, you know. And he totally 2 ignored his own expert witness, you know, Lubbe and 3 Lozard. You know, I read -- talk about getting 4 pissed off, that's how you get pissed off, making 5 statements, you know, that were totally untrue 6 that -- but look, I don't want to abuse you for 7 that, but this -- there are things here that make no 8 sense at all. 9 And I have no reason -- I have no -- you 10 know, I have no ax to grind. It's not like, you 11 know, I'm not admitted of a fraud. I admitted to a 12 fraud. I said that. So, you know, there's no 13 reason for me to say things that were not the case 14 because I've already been sentenced, totally 15 unfairly because they're trying to make me the 16 poster boy of Wall Street, which everyone is aware 17 of; but the -- you know, there are certain -- well, 18 it's not important. 19 So yes, I am pissed off because they did 20 enough -- I admitted to doing enough things that 21 were totally embarrassing and wrong that I regret, 22 obviously, but there gets to be a point where enough 23 is enough because it's an insult to my intelligence, 24 you know, for someone who's supposed to be an expert 25 witness, you know, to not -- you know, to make</p>

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<p>1 statements that it looked -- on the face of it look 2 ridiculous. And there were other expert witnesses 3 of reports I've read who said that themselves that 4 the Dubinsky report is preposterous or that the -- 5 Picard has made statements that are totally 6 ridiculous. 7 I can't believe that he has -- that he had 8 the nerve to even say these things and then hold 9 himself out as, you know, being a legitimate and 10 honest, you know, person. I mean, for this whole 11 idea with the short sale fiasco I've spoken to 12 numerous attorneys that -- you know, SEC attorneys 13 that have said what? 14 Is he saying that a short sale is a 15 fictitious transaction? It's not an honest 16 transaction? You know, I'm considering starting a 17 class action. And there are people that can turn 18 around and say look, you know what? 19 Anybody that lost money in a short sale in 20 the market, had nothing to do with me, if they lost 21 money in a short sale based upon his expert, you 22 know, witnesses and himself say, well, that's not a 23 legitimate transaction. So, therefore, I'll sue 24 Charles Schwab because, you know, it's so -- I've 25 had people tell me, well known attorneys much major</p>	<p>1 for identification.) 2 MR. KRATENSTEIN: 21? 3 Q. (By Ms. Fein) Yeah. This has been marked 4 as Exhibit 21. You can look through the document, 5 but I have a couple of questions on this first page 6 before -- this first page that you're looking at 7 now, so you just tell me when you're ready. 8 A. Okay. 9 Q. So this appears to be -- the first page 10 appears to be a form with handwritten notes and the 11 date appears to be 12-8-08. Do you see that? 12 A. Thank you. Yes. 13 Q. Do you recognize this form? 14 A. Yes. 15 Q. What was it called? 16 A. I don't know what it was -- I don't know 17 that it had any name. 18 Q. You didn't have something that you would 19 call it? 20 A. No. 21 Q. Okay. Who worked on it? 22 A. This looks like Jodi Crupi. 23 Q. And when you say -- are you referring to 24 the handwriting? 25 A. Yes. I know she kept this kind of report.</p>
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<p>1 and much bigger than your firm who've said now, 2 Bernie, nobody could say, he couldn't possibly say 3 that. He couldn't possibly be basing his case that 4 a fraud -- you know, that a short sale is a 5 fictitious transaction and a fraud. 6 He may get a bankruptcy judge who probably 7 knows less than him make that statement, you know, 8 or not do anything about it; but the people that say 9 they don't understand how anybody could do that 10 because it makes them look like a fool. And I know 11 he's not, so I don't understand why he would, you 12 know, try and ruin his reputation, which is what 13 he's doing, by submitting a report like that. Well, 14 anyway, I've said my peace. 15 MS. FEIN: Okay. 16 MR. GOLDMAN: Do you have another question 17 for him? 18 MS. FEIN: I do. 19 THE WITNESS: Peter, can you get me a 20 water or soda? I'm losing my voice here. 21 MR. GOLDMAN: Yeah, yeah. I'd get you a 22 scotch, but I don't think -- 23 THE WITNESS: I don't drink, so we'll go 24 with -- I'm considering it. 25 (Trustee's Exhibit Number 21 was marked</p>	<p>1 Q. Okay. Was this report kept regularly by 2 Jodi? 3 A. Yes. 4 Q. Was it kept on a daily basis? 5 A. I believe so. 6 Q. Was it kept by your firm in the ordinary 7 course of business? 8 A. Not on the market making or proprietary 9 side, no. 10 Q. For the IA business was this kept, was 11 this -- 12 A. Yes. 13 Q. -- report kept in the ordinary course of 14 your business? 15 A. Yes. 16 Q. What was the form used for? 17 A. Adjusted for, you know, what was -- what 18 was requested to be sent out in the way of checks 19 that were requested by clients and what checks had 20 come in. So she -- she or other people that worked 21 in this or that department could keep track of 22 monies in and monies out. 23 Q. Does the first -- underneath the date 24 there's a figure, 297,903, balance forward. Do you 25 see that?</p>

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<p>1 A. Yes.</p> <p>2 Q. Does that refer to a positive cash amount?</p> <p>3 A. I assume it would refer to a cash balance</p> <p>4 in the 703 account, bank account.</p> <p>5 Q. Okay.</p> <p>6 A. Which was a Morgan -- JPMorgan account.</p> <p>7 Q. Okay. And next to wiring out at like the</p> <p>8 bottom half of the page it appears that there's a</p> <p>9 large amount of money that's being wired out on this</p> <p>10 date?</p> <p>11 A. By the way, I want to correct my statement</p> <p>12 about starting a class action because I --</p> <p>13 Q. You don't plan on doing that?</p> <p>14 A. I would love to, but it's a little bit</p> <p>15 preposterous. So let's say just so that I can get</p> <p>16 out of here early, not this meeting, although I</p> <p>17 wouldn't mind that either, but I don't want Picard</p> <p>18 to get nervous, which I'm sure he wouldn't anyhow.</p> <p>19 Q. Do you see that there are substantial sums</p> <p>20 in the wiring out --</p> <p>21 A. Correct.</p> <p>22 Q. -- category? Okay. Would you have seen</p> <p>23 this document at or around the time that it's dated,</p> <p>24 12-8-08?</p> <p>25 A. I typically saw this regularly.</p>	<p>1 Probably Dubinsky had no clue.</p> <p>2 Q. I'm talking with respect to your firm,</p> <p>3 though, not with respect to Wall Street but just</p> <p>4 with respect to your firm at that time?</p> <p>5 A. Yes. It was very obvious to us there was a</p> <p>6 crisis coming.</p> <p>7 Q. Okay. So there are handwritten notes on</p> <p>8 the pages that follow this first page of the</p> <p>9 document. If you just look at that first -- the</p> <p>10 page ending in 589, do you recognize that</p> <p>11 handwriting?</p> <p>12 A. No. This actually looks like my</p> <p>13 handwriting.</p> <p>14 Q. Okay.</p> <p>15 A. That right there?</p> <p>16 Q. Yeah, yeah.</p> <p>17 A. Yeah.</p> <p>18 Q. Okay. And then if you go forward another</p> <p>19 page there's also handwriting. It appears the</p> <p>20 handwriting on this document in general, so you can</p> <p>21 look at it.</p> <p>22 A. I want to look at these notes for a second.</p> <p>23 Q. Sure.</p> <p>24 A. Okay.</p> <p>25 Q. Okay. On the page ending in 591, is that</p>
Page 648	Page 650
<p>1 Q. Okay. And would this document give you</p> <p>2 information about customer withdrawals and deposits?</p> <p>3 A. Yes.</p> <p>4 Q. And would it give you information about the</p> <p>5 financial health of the firm with respect to the</p> <p>6 customer side?</p> <p>7 A. Would it give me --</p> <p>8 MS. CHAITMAN: Objection to form.</p> <p>9 THE WITNESS: It would give me a picture</p> <p>10 of what was about to happen with monies in and out</p> <p>11 of the firm, but it was never really a concern</p> <p>12 because the firm -- this side of the firm always</p> <p>13 had -- you know, it was liquid enough to handle</p> <p>14 whatever withdrawals were coming out.</p> <p>15 Q. (By Ms. Fein) But at this time, so</p> <p>16 December 8th, 2008, that wouldn't be the case;</p> <p>17 right?</p> <p>18 A. No.</p> <p>19 Q. Okay. So would this document be an</p> <p>20 indication for you that you knew that perhaps you</p> <p>21 wouldn't have a lot of funds left in the 703</p> <p>22 account?</p> <p>23 A. At this period of time there was no one on</p> <p>24 Wall Street that didn't know what was going to</p> <p>25 happen to Wall Street unless they weren't breathing.</p>	<p>1 also your handwriting, 591?</p> <p>2 A. Oh, yes.</p> <p>3 Q. And if you flip ahead to page 593, it looks</p> <p>4 like every other page is blank. So I'm only</p> <p>5 referring to the ones that have handwriting on them.</p> <p>6 Does that also look like your handwriting?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Would you agree your handwriting is</p> <p>9 also on page 595?</p> <p>10 A. Yes.</p> <p>11 Q. Would you agree your handwriting is on 597?</p> <p>12 A. Uh-huh, yes.</p> <p>13 Q. And would you agree your handwriting is on</p> <p>14 599?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And if you'd just look through the</p> <p>17 remaining pages, if you can just confirm that's your</p> <p>18 handwriting, too? If you see any that's not yours,</p> <p>19 let me know.</p> <p>20 A. You know, I have a question.</p> <p>21 Q. Uh-huh.</p> <p>22 A. Oh, these are not -- I don't understand how</p> <p>23 -- it looks like there's two -- two pages made to</p> <p>24 look just like one. For example, on the first</p> <p>25 page --</p>

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<p style="text-align: right;">Page 651</p> <p>1 Q. Oh, that's just the copying. That's just 2 the copying, yeah. 3 A. Okay. So in other words -- okay. It has 4 nothing to do with the -- 5 Q. The original. 6 A. -- the original, the first page. 7 Q. That's right. 8 A. All right. 9 Q. Oh, this is a single document in terms of 10 this was found in one place, but I -- 11 A. But this is -- this report -- 12 Q. Right. 13 A. -- would normally not have this on the 14 other side. 15 Q. Understood, right. That's just an issue of 16 the copying. That's just an issue of -- 17 A. Oh, okay. All right, okay. 18 MS. FEIN: Right, right. I can't speak to 19 that process. 20 MR. KRATENSTEIN: Just for the record, you 21 took a single-sided document and made it 22 double-sided? That's what happened? In other 23 words, the documents were found single-sided in a 24 row and then for the purposes of this deposition 25 you've double-sided them?</p>	<p style="text-align: right;">Page 653</p> <p>1 doctor the document. This was -- my understanding 2 is this was found together. The fact that it's 3 double-sided as opposed to single-sided is, you 4 know, an oversight; but -- and I apologize that it's 5 double-sided, but I'm saying that this was found as 6 a single document. 7 A. Yeah, but they could have been ten days 8 apart or two weeks apart. 9 Q. Well, I wanted to ask you. That was my 10 question for you. 11 A. I'm assuming because Jodi would not -- none 12 of this has anything to do -- stuff that's in my 13 handwriting has nothing to do with Jodi with what 14 was on this page. She would keep this page. All 15 right. And there would be another one for another 16 day for that page. This here looks like you can 17 tell from the lines this was on a legal pad. 18 It was my notes for myself, all right, as 19 to any number of things, but it's not related to 20 this document. They may have found this document in 21 Jodi's office and this could have been in my 22 briefcase. 23 Q. This document was found together. I don't 24 want to quibble with you about that. I do -- you 25 should look at the last page of the document. On</p>
<p style="text-align: right;">Page 652</p> <p>1 MS. FEIN: That's my understanding. I 2 would say that the Bates are consecutive. 3 MR. KRATENSTEIN: Okay. 4 MS. FEIN: So when we printed it, it was 5 printed double-sided. I can't make representations 6 about what the original looked like because we're 7 looking at the copy from the files. 8 MR. KRATENSTEIN: Okay. 9 THE WITNESS: In other words, they're not 10 -- the dates are not related to each other 11 because -- 12 Q. (By Ms. Fein) You don't believe that the 13 dates are related to one another? 14 A. This in itself was -- 15 MR. GOLDMAN: Say page one of the 16 document. 17 THE WITNESS: This page of the copy, 18 Jodi's handwriting, had nothing to do with the 19 other. In other words, what Andrew is saying is 20 true. They probably took -- it would probably be 21 like taking this document and putting it, you know, 22 on the other side of this document and making it 23 appear as if they're the same document and they're 24 not. 25 Q. (By Ms. Fein) I know we certainly didn't</p>	<p style="text-align: right;">Page 654</p> <p>1 the last page of the document also is another -- 2 it's a printout. It's not handwritten notes. So I 3 understand not all the pages are handwritten that 4 you're seeing here. I wanted to ask you about the 5 notes and if they were your handwriting? 6 A. I will acknowledge that the notes are in my 7 handwriting -- 8 Q. Okay. 9 A. -- but there's nothing in my handwriting 10 has nothing to do with that original Jodi's document 11 because, in other words -- 12 Q. You don't think they were close in time. 13 Is that what you're saying? 14 A. No. This would -- they were probably not 15 close in time. They may be a couple of dates in 16 time. Obviously, it would -- it would have nothing 17 to do with Jodi, you know. 18 Q. I understand that, I understand that. 19 A. Okay. 20 Q. The handwritten notes you're saying are not 21 -- you don't -- it wouldn't have involved Jodi's 22 process at all -- 23 A. That's correct. 24 Q. -- because it's your notes. I understand 25 that, yes.</p>

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<p style="text-align: right;">Page 655</p> <p>1 MR. KRATENSTEIN: Just so we're all clear, 2 Jodi's notes on the first page and then on the pages 3 thereafter, it's Mr. Madoff's handwritten notes. 4 THE WITNESS: Right. 5 Q. (By Ms. Fein) Do you have a recollection 6 of making any of the notes that are here? 7 A. Yes. It's my handwriting, so -- 8 Q. Do you recall -- do you recall making these 9 notes? Do you recall going through the exercise of 10 making these notes in 2008? 11 A. Yes, yes. 12 Q. What do you recall about it? 13 A. These are notes -- well, that at the end I 14 was considering sending out monies, paying bonuses 15 to people, sending out checks to -- I was planning 16 to send out checks because I knew the firm was -- we 17 were going out of business. And I had written the 18 checks and, as a matter of fact, I put them in my 19 drawer. 20 It was actually, I think, I wrote these 21 notes, you know, prior to me making the decision 22 that the firm was -- well, it was in conjunction was 23 going out of business. I wanted to sort of -- I 24 owed traders money for what was due to them, so on 25 and so forth. So I wrote out checks, put them in my</p>	<p style="text-align: right;">Page 657</p> <p>1 have nothing to do that would have had to be done. 2 It was things to myself trying to figure out where I 3 stood afterwards. 4 Q. Okay. 5 A. If you look at -- see, it says I can't make 6 -- I wrote can't make traders 100 percent whole. I 7 was referring to the fact that I didn't have enough 8 money to cover, you know, what I owed the traders in 9 their compensation. 10 Q. Is that employees or traders? 11 A. Employees, and employees also had accounts 12 with me. So I was -- you know, I couldn't -- 13 couldn't cover everything that was in their account. 14 Q. And you're referring to page Bates ending 15 in 599; right? 16 A. Yes, correct. 17 Q. Okay. On page ending 597, one page before 18 the one you're looking at, I think, can you find the 19 one ending in 597 for me? 20 A. Which one? 21 Q. 597. I think it's the other way. 22 A. Yes. 23 Q. The first line looks like 1960, dash, 24 present. And then I can't -- I'm not sure. Average 25 or --</p>
<p style="text-align: right;">Page 656</p> <p>1 drawer and called my lawyer because I was planning 2 at that time to turn myself in. And he said don't 3 send the checks out. So I left them in the drawer 4 and then they never did go out. That's what I 5 recall. 6 Q. So do you think you could have looked at 7 the amounts listed on the first page of the document 8 in 588 so that you knew how much money you had for 9 writing the checks? 10 A. Yes. That's certainly possible. 11 Q. So the handwritten notes were made around 12 the same time, you wouldn't say necessarily on the 13 same day, but around the same time as December 8th, 14 2008? 15 A. Right, yes, uh-huh. Or sometime 16 afterwards, you know. 17 Q. After you would have seen the report -- 18 A. Yes. 19 Q. -- from Jodi? 20 A. Well, no. It could have been made prior. 21 I just don't know. I mean, my head was sort of up 22 my wherever at that time, but I don't -- obviously, 23 I can see from the notes here that it was what I had 24 planned to do was paying out traders and so on; but 25 then there were things on here, on notes that would</p>	<p style="text-align: right;">Page 658</p> <p>1 A. Looks like average, 39 million. 2 Q. Okay. Do you know what that would be 3 referring to? 4 A. I think it refers to what the profit of the 5 firm was over a certain period of time from 1960 to 6 present. 7 Q. Okay. And do you see down -- there are 8 calculations on the right side. One says equal 39 9 mill per year and then to the left of that, 1909 10 divided by 49 years? 11 A. Yeah. I'm trying to figure out what 12 they're referring to. 13 Q. But you agree that the calculation, it does 14 say 49 years; right? 15 A. Doesn't it say 39 years? It says 1960 to 16 present average equals 39 million. 17 Q. Uh-huh. And then look at underneath where 18 you have 691, 1218 over 1909. Do you see that? 19 A. Right. 20 Q. Divided, and that looks like 49 equals 39 21 mill per year. Do you see that? 22 A. Right. 23 Q. Okay. And below that it looks like it says 24 without draw. Do you see that, without draw? 25 A. I think it refers to the profit of the</p>

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<p style="text-align: right;">Page 659</p> <p>1 firm.</p> <p>2 Q. Okay. But does draw refer to amounts taken</p> <p>3 out by your employees?</p> <p>4 A. Draw was money that -- no. It was either I</p> <p>5 had a draw account, which is typical that I drew</p> <p>6 money out. I didn't have a -- it was like a salary</p> <p>7 that I would draw out of the firm. And I'm not real</p> <p>8 sure what this is referring to, my draw or the</p> <p>9 traders' draw or a combination thereof.</p> <p>10 Q. Okay. Do you see where the line under</p> <p>11 draw, it looks like it says draw five mill per -- do</p> <p>12 you see that? It looks like the last line next to</p> <p>13 the calculation ending in 2154?</p> <p>14 A. Right.</p> <p>15 Q. Was the 5 million draw something that you</p> <p>16 received?</p> <p>17 A. I don't know. It could be. It could have</p> <p>18 been my draw. I know I didn't draw 5 million a</p> <p>19 year, so it could have been my draw. It could have</p> <p>20 been mine plus other people's draw. I'm not sure.</p> <p>21 Q. Okay. 1962 to December 2008 is about -- is</p> <p>22 49 years; right?</p> <p>23 A. Uh-huh, right, yeah. The 1909 divided by</p> <p>24 49 is -- it looks -- to me it would look like how</p> <p>25 much the firm, you know, grew over a 49-year period,</p>	<p style="text-align: right;">Page 661</p> <p>1 MS. CHAITMAN: Objection to form.</p> <p>2 THE WITNESS: Well, I certainly know -- I</p> <p>3 certainly know that there are notes here that refer</p> <p>4 to how much employees would do from their trading</p> <p>5 profits, their draws, things of that sort.</p> <p>6 MS. FEIN: Uh-huh.</p> <p>7 THE WITNESS: That -- you know, there were</p> <p>8 certain things that I was trying to analyze how much</p> <p>9 the firm had made, how much -- things of that sort.</p> <p>10 Q. (By Ms. Fein) Okay. So you think the firm</p> <p>11 -- so you think the firm on average made 39 million</p> <p>12 a year for the 49 years it was in business?</p> <p>13 A. Again, I don't know whether that was</p> <p>14 including money that was taken out in compensation</p> <p>15 by my -- you know, by me alone, by my family or by</p> <p>16 the employees. I can't really -- I can't really</p> <p>17 tell from looking at it just like this. It was --</p> <p>18 I'm just analyzing various things.</p> <p>19 And most of it deals with monies with the</p> <p>20 checks that I was planning to send out, which I</p> <p>21 would have determined by looking at how much money</p> <p>22 people had in their accounts.</p> <p>23 Q. Okay. And it looks like it refers to what</p> <p>24 -- so these would have been notes -- let me ask.</p> <p>25 Were these notes you made to yourself?</p>
<p style="text-align: right;">Page 660</p> <p>1 39-year period, something like that.</p> <p>2 Q. Okay. Forty-nine years is about how long</p> <p>3 your business was going on; right?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And there were references to your</p> <p>6 firm starting in 1960 in the proffer agreement that</p> <p>7 we looked at or the proffer statement?</p> <p>8 A. Yeah. It looked to me like I was trying to</p> <p>9 calculate how much the firm made or how much they</p> <p>10 showed on their focus reports. I don't recall.</p> <p>11 Q. Okay. But the calculations taking place</p> <p>12 over 49 years; right?</p> <p>13 A. Right, which was the life of the firm.</p> <p>14 Q. Uh-huh. So these notes were written in</p> <p>15 December 2008; right?</p> <p>16 A. I can't -- I can't be sure. I can't say</p> <p>17 for certain what period. There's so many different</p> <p>18 notes and --</p> <p>19 Q. Okay.</p> <p>20 A. -- some of them are related, some of them</p> <p>21 are not related to each other.</p> <p>22 Q. Okay. But would this have been part of the</p> <p>23 same exercise we were talking about, thinking about</p> <p>24 writing out checks and what you were going to do</p> <p>25 about the end of the firm?</p>	<p style="text-align: right;">Page 662</p> <p>1 A. Notes I was writing to myself, yeah.</p> <p>2 Q. Yes, okay. Was anyone else present when</p> <p>3 you were making them that you recall?</p> <p>4 A. No.</p> <p>5 Q. Okay. Do you recall where you were when</p> <p>6 you made them?</p> <p>7 A. No. It could have been in my office. It</p> <p>8 could have been when I was home. I don't know.</p> <p>9 Q. But did you share them with anyone else</p> <p>10 after you made them?</p> <p>11 A. No. I would have had to get the</p> <p>12 information from Annette as to how much money people</p> <p>13 had in their accounts because I had to get them from</p> <p>14 because that's not something that I ever had off the</p> <p>15 top of my head.</p> <p>16 Q. Okay. Mr. Madoff, did you have any</p> <p>17 meetings to prepare for this deposition?</p> <p>18 A. Meetings?</p> <p>19 Q. Uh-huh.</p> <p>20 A. No. You mean --</p> <p>21 Q. Did you meet with Mr. Goldman to prepare</p> <p>22 for your deposition today?</p> <p>23 A. No. Oh, today he came -- I met with him</p> <p>24 the day before yesterday, but it wasn't necessarily</p> <p>25 in relation to that. He came down here earlier.</p>

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<p>1 Q. So you've not had any -- you're saying you 2 have not had meetings to prepare for your 3 deposition? 4 A. Peter Goldman came down. We discussed this 5 -- you know, my situation in general, I mean, from 6 how I was feeling. 7 MS. CHAITMAN: You don't have to talk 8 about anything confidential that you -- 9 THE WITNESS: No, no. 10 MR. GOLDMAN: Yeah. We had a meeting. 11 THE WITNESS: Well, you can find out who 12 was here to visit me. That's all. 13 Q. (By Ms. Fein) Okay. Did you meet with Ms. 14 Chaitman or Mr. Kratenstein to prepare for your 15 deposition? 16 A. Mister who? 17 Q. Mr. Kratenstein. 18 A. They were down here yesterday. Not 19 yesterday, the day before yesterday. Is this the 20 second day or the third day? Yesterday. 21 Q. How long did you meet with them? 22 A. An hour or two. 23 Q. What did you guys discuss? 24 MR. KRATENSTEIN: I'm going to object. 25 Hang on. I'm going to object. What we discussed</p>	<p>1 decide which direction I'll go. 2 Q. (By Ms. Fein) I think I asked how long you 3 met with Ms. Chaitman and Mr. Kratenstein, if you 4 recall. 5 A. I guess it would be probably a couple of 6 hours. 7 Q. Were you shown any documents during the 8 meeting? 9 A. I asked what the meeting was going to be 10 about. 11 MR. GOLDMAN: Bernie, just try and answer 12 the question. She asked you if you saw any 13 documents. So it's either -- 14 THE WITNESS: I guess I saw documents, 15 yes. 16 Q. (By Ms. Fein) Do you -- were they any of 17 the documents that we reviewed today or yesterday? 18 A. To tell you the truth, I don't even know 19 what I saw. I saw documents. I don't know whether 20 they were the same as the ones that you had or not. 21 I don't know. 22 MS. FEIN: Okay. We would ask to see any 23 documents that you showed Mr. Madoff during the 24 course of your meeting with him. 25 Q. (By Ms. Fein) Did you have any -- any</p>
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<p>1 with Mr. Madoff is our work product because we're 2 allowed to talk to people. So I consider that our 3 work product. So my view is any discussions we had 4 with Mr. Madoff are work product that go to our 5 mental impressions. So I object to that question. 6 I'll leave it to Mr. Goldman as to whether he's 7 going to instruct not to answer. 8 I'll allow you to talk about the -- I 9 don't have an objection to subject matter or asking 10 him of any documents we used to refresh recollection 11 or anything like that, but I do have an objection to 12 discussions, substance of discussions. 13 MS. FEIN: So are you directing him not to 14 answer on the basis of your work product? 15 MR. KRATENSTEIN: It's our work product, 16 our mental impressions and our discussions with him 17 that reveal as mental impressions our work product. 18 And I would ask that an instruction be given that he 19 should not disclose that information. 20 MS. FEIN: Any information related to your 21 work product; right? 22 MR. KRATENSTEIN: Yes, yes. 23 MS. FEIN: Understood. 24 MR. GOLDMAN: Ask the question and then 25 we'll -- if I have an objection, then we'll -- I'll</p>	<p>1 other preparation for your deposition with Ms. 2 Chaitman or Mr. Kratenstein before this week? 3 A. I'd never met Mr. Kratenstein until that 4 original meeting. 5 Q. Okay. Did you discuss the Sages at your 6 meeting? 7 A. Did I discuss the Sages? I discussed what 8 my relationship -- he asked what my relationship was 9 with the Sages and who I met with, so I told him. 10 Q. And were you shown any documents to refresh 11 your recollection about the Sages or any meetings 12 you had with them? 13 A. I was familiar with -- with the Sages. 14 They knew I was familiar with the Sages. I'm not 15 sure I understand what you're asking me. 16 Q. The question was have you looked at any 17 documents? 18 A. Yes. I looked at documents. I saw -- you 19 know, I saw confirmations, you know, and statements 20 of trades, not all, certainly not as much as I've 21 seen today. 22 MS. FEIN: Understood. All right. I 23 think we're all set. Thank you, Mr. Madoff. 24 THE WITNESS: Okay. 25 MS. CHAITMAN: I just have a few questions</p>

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<p>1 and then --</p> <p>2 MR. KRATENSTEIN: And I have a couple.</p> <p>3 FURTHER EXAMINATION</p> <p>4 BY MS. CHAITMAN:</p> <p>5 Q. Okay. Mr. Madoff, how were the traders</p> <p>6 compensated at your firm?</p> <p>7 A. They got -- they basically got a percentage</p> <p>8 of their market making profits, proprietary trading</p> <p>9 profits.</p> <p>10 Q. What was the percentage? Did it vary per</p> <p>11 person?</p> <p>12 A. Typically it was 20 percent of their net</p> <p>13 trading profits. That was after commissions and</p> <p>14 expenses related to their trading.</p> <p>15 Q. The commissions would have been payable to</p> <p>16 whom?</p> <p>17 A. To their -- which --</p> <p>18 Q. When you say after, typically 20 percent of</p> <p>19 their net?</p> <p>20 A. Oh, depends upon where the transaction was</p> <p>21 executed. If it was -- if the transaction was</p> <p>22 cleared, there would be -- that would be deducted.</p> <p>23 If there was interest, it would be charged to their</p> <p>24 account depending upon whether we had bank loans</p> <p>25 out, things like that. They were -- if the -- if it</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. Do you remember what your desires</p> <p>3 were with respect to what documents would be</p> <p>4 shredded and what documents would be held?</p> <p>5 A. Not really.</p> <p>6 Q. Were you trying to conceal evidence of a</p> <p>7 crime?</p> <p>8 A. Well, let's put it this way. There was no</p> <p>9 crime prior to '90 -- to the '90s. So that's easy</p> <p>10 for me to answer.</p> <p>11 Q. Okay. So what -- do you remember why you</p> <p>12 would have said to hold certain documents and shred</p> <p>13 others?</p> <p>14 A. You know, we had no general policy with</p> <p>15 retaining -- as I've said numerous times, the</p> <p>16 retention period for documents on Wall Street is six</p> <p>17 years. That's an industry requirement. So you're</p> <p>18 not required to hold documents more than six years</p> <p>19 and most firms shred immediately after that because</p> <p>20 they just don't want to store the documents.</p> <p>21 As far as the -- but as I've said numerous</p> <p>22 times, we held customer-related documents relating</p> <p>23 to cost basis for customers, tax basis for customers</p> <p>24 because that -- we would constantly be asked to --</p> <p>25 for information from the clients' accountants, you</p>
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<p>1 was a transaction that was laid off on the floor of</p> <p>2 an exchange, there would be commissions -- there</p> <p>3 would be commissions paid on that so they would --</p> <p>4 that would be deducted. Their 20 percent was a net</p> <p>5 net.</p> <p>6 Q. So it was 20 percent of the profits they</p> <p>7 generated. Is that a fair --</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. If you could just take a look? You</p> <p>10 can look at my copy of Trustee's Exhibit 19. This</p> <p>11 is -- just take a look at this. It's 19 and --</p> <p>12 MS. FEIN: Marked copy.</p> <p>13 Q. (By Ms. Chaitman) 19 and 18, yeah. Do you</p> <p>14 recognize the handwriting on Exhibit 18 where it</p> <p>15 says hold?</p> <p>16 A. It looks like it's the same as -- like it's</p> <p>17 Annette or it could be Jodi. You know, I can't</p> <p>18 really tell from that.</p> <p>19 Q. Okay.</p> <p>20 A. Yeah. Looks like two different</p> <p>21 handwriting. One is printed and one is like script.</p> <p>22 Q. Right. And one is asking you -- one is</p> <p>23 asking you about documents in 1979 to '81 and the</p> <p>24 other is asking you about documents in 1982. Do you</p> <p>25 see that?</p>	<p>1 know, or a tax lawyer, which could happen at any</p> <p>2 given time.</p> <p>3 MS. CHAITMAN: Do you have to stop?</p> <p>4 THE VIDEOGRAPHER: Yes. I do.</p> <p>5 MS. CHAITMAN: Okay.</p> <p>6 THE VIDEOGRAPHER: This marks the end of</p> <p>7 disc number two in the deposition of Bernard L.</p> <p>8 Madoff. Going off the record. The time is 13:08.</p> <p>9 (A recess was taken.)</p> <p>10 THE VIDEOGRAPHER: Back on the record.</p> <p>11 This begins disc number three in the deposition of</p> <p>12 Bernard L. Madoff in Butner, North Carolina on</p> <p>13 November 9th, 2017. The time is 13:12.</p> <p>14 Q. (By Ms. Chaitman) So Mr. Madoff, if you</p> <p>15 look at Exhibit 19 --</p> <p>16 A. Yes.</p> <p>17 Q. Okay. You apparently gave instructions to</p> <p>18 shred the C&S statements. Do you see that?</p> <p>19 A. Number one, I don't know that I gave that</p> <p>20 -- I don't believe that I gave anybody instructions</p> <p>21 as to what to shred, what not to shred. I mean,</p> <p>22 it's not -- I would have no interaction with these</p> <p>23 people. So somebody in Annette's office like either</p> <p>24 Annette or some other employee, some of the other</p> <p>25 people would tell people what to shred, what not to</p>

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<p>1 shred. My instructions were to shred anything that 2 we did not need to have in the future, so -- 3 Q. Right. Okay. So consistent with that 4 where it says hold at the second half of the first 5 page of Trustee's Exhibit 19, there are several 6 items which are hold and they're all EOM customer 7 ledgers. 8 A. Yes. 9 Q. Is that consistent with the strategy you've 10 described? 11 A. It would -- holding a customer ledger would 12 be because a customer ledger would typically have 13 all the pricing information, the information we 14 would need to supply to their accountants. 15 Q. Okay. 16 A. So there was no reason to hold. 17 Q. Okay. 18 A. The other things here are -- involve 19 brokerage firms that we bought and sold stock to. 20 So there's no reason for that because once the trade 21 settles, there's no reason to have anything related 22 to the counterparties. 23 Q. Okay. Similarly, if you look at Trustee's 24 Exhibit 18, are the documents that you -- that have 25 the X next to them, which the handwriting which is</p>	<p>1 A. Correct. 2 Q. -- right? Okay. And was it your intention 3 to keep that money for the benefit of the investment 4 advisory customers? 5 A. That was the only reason. It was money 6 that, you know, we would have needed to settle with 7 clients if they asked us for money from their 8 account. 9 Q. Okay. And, in fact, do you recall 10 testifying that you kept those T-bills to maturity? 11 A. I don't remember, you know. They were 12 basically short-term instruments, so we would 13 normally keep them until we needed the money to pay 14 out or whether they expired. 15 Q. Okay, okay. Now, so is it fair to say that 16 if an investment advisory customer wanted to close 17 out his or her account and you had to come up with 18 \$5 million in cash, that if you didn't have 19 \$5 million sitting in a bank account, you would have 20 liquidated one of the T-bills to pay it? 21 MS. FEIN: Objection. 22 Q. (By Ms. Chaitman) Pardon? 23 A. Yes. 24 MS. CHAITMAN: Okay. What's your 25 objection?</p>
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<p>1 unidentified says shred the Xs only, were those 2 specific to customers or were they general? 3 A. They would need -- we wouldn't have any 4 reason to have them because once the trade settles, 5 it settles. So there's no reason to hold anything. 6 Q. Okay, okay. Now -- 7 MR. KRATENSTEIN: Go ahead. 8 Q. (By Ms. Chaitman) Now, Amanda asked you 9 several questions about the T-bills that you held? 10 A. Right. 11 Q. And you had previously testified that you 12 maintained a portfolio of about \$6 billion of 13 T-bills? 14 A. Correct. 15 Q. And did you buy those with money invested 16 through the investment advisory business? 17 A. Correct. 18 Q. So it was -- those T-bills were purchased 19 with house 17 customer money? 20 A. Yes. 21 Q. Okay. And you've previously described how 22 those were maintained at -- 23 A. Morgan Stanley, Fidelity. 24 Q. -- Bear Stearns, Morgan Stanley, Fidelity, 25 Lehman and JPMorgan Chase --</p>	<p>1 MS. FEIN: That was -- it was testifying. 2 It was your testimony, not Mr. Madoff's. 3 Q. (By Ms. Chaitman) Mr. Madoff, would you be 4 good enough to cure Amanda's objection and could you 5 say that in your own words? I don't want to put 6 words in your mouth. 7 A. My plan was that if I needed money to 8 settle a customer's account, I would typically 9 either take the money out of the 703 bank account, 10 which is typically where we kept all clients' 11 monies, or if there wasn't immediate cash available, 12 which there was most of the time, I would then 13 liquidate T-bills. 14 Q. Okay. And, again, those T-bills were 15 purchased with money -- 16 A. It was always purchased with money from the 17 703 account. 18 Q. Okay. And that was the investment advisory 19 customers' money? 20 A. Correct. 21 Q. Now, you were talking about the ledgers. 22 Amanda was showing you some ledgers and I believe 23 you testified that there was subsidiary ledgers for 24 each institution that you did business with? 25 A. There were -- there were either ledgers or</p>

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<p>1 documents. You know, there were statements. So</p> <p>2 that's what -- I'm not -- I don't recall what -- and</p> <p>3 it changed all the time, you know, how -- what the</p> <p>4 practice was of firms sending out statements</p> <p>5 because, again, it depended upon what stage the</p> <p>6 clearing cycles were in, in other words, whether --</p> <p>7 how the DTC worked, how NSCC worked and whether we</p> <p>8 had automated interfaces with firms.</p> <p>9 We had 500 interfaces with -- not 500. We</p> <p>10 had over 100 interfaces with 500 different brokerage</p> <p>11 firms. Everything was done, you know, on computer.</p> <p>12 So there was no -- there was no exchanging of</p> <p>13 confirmations. There was no cash in settlement,</p> <p>14 things of that sort.</p> <p>15 And the firm themselves, the operations</p> <p>16 department had their own policies of how they --</p> <p>17 what records they have, which I, quite frankly, am</p> <p>18 not even familiar with. I have no idea with some of</p> <p>19 these C&S, cash and securities settlements. I don't</p> <p>20 know what they relate to.</p> <p>21 Q. Okay. But with the 10 or 11 banks that</p> <p>22 you've named that you had custodial relationships</p> <p>23 with, is it fair to say that you would have had</p> <p>24 records showing what securities were held at each</p> <p>25 institution?</p>	<p>1 complained.</p> <p>2 I said how am I going to -- how am I going</p> <p>3 to piece everything together? How am I going to</p> <p>4 demonstrate what really -- what really occurred</p> <p>5 financially and so on? I said, well, that's all</p> <p>6 that they were able to produce to me.</p> <p>7 Q. Ike Sorkin?</p> <p>8 A. Ike Sorkin. And they produced records that</p> <p>9 went back no longer than 1998. And that was even --</p> <p>10 you know, they said we don't have any bank records.</p> <p>11 We don't have this and that. They complained. They</p> <p>12 complained to the judge, I guess, prior to my</p> <p>13 sentencing. It was one of my court appearances.</p> <p>14 And Chin insisted, got agitated and insisted to the</p> <p>15 prosecutor, said instruct -- you know, give them the</p> <p>16 records.</p> <p>17 And they said, well, we can't find any.</p> <p>18 The records were very sloppy. You know, you would</p> <p>19 have the impression that we didn't have any records</p> <p>20 and that the records were scraps of paper. And this</p> <p>21 -- you know, so when I was sentenced, you know, I</p> <p>22 couldn't -- as a matter of fact, I was asked do you</p> <p>23 want to appeal when I had this 150-year sentence.</p> <p>24 I said how am I going to appeal? I said I</p> <p>25 don't have any records. I said where in the hell</p>
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<p>1 A. As a general rule, yes, but I don't know.</p> <p>2 Again, it depends upon the time frame involved</p> <p>3 because all of that changed over the years depending</p> <p>4 upon what the various interfaces of automation was</p> <p>5 available to firms.</p> <p>6 Q. Right, right. So if you could do it</p> <p>7 through the internet, you wouldn't need to have the</p> <p>8 paper copies; is that right?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. I understand that.</p> <p>11 A. You know, I want to go on the record of</p> <p>12 stating, by the way, relating to that, when this</p> <p>13 thing -- when I first got arrested I requested, you</p> <p>14 know, all the records that were available to the</p> <p>15 firm. I requested it to my attorneys, who then</p> <p>16 requested the Trustee send me all the documents that</p> <p>17 they had.</p> <p>18 And my purpose was that I was -- if I</p> <p>19 wanted -- I would need to go to trial to demonstrate</p> <p>20 when the crime started and what was involved and</p> <p>21 what was -- how much was made and lost. And the</p> <p>22 only thing that they -- and they never produced</p> <p>23 anything. I shouldn't say never. All they produced</p> <p>24 was a box exactly this size that was delivered up to</p> <p>25 me while I was in -- you know, in jail. And I</p>	<p>1 are the records? And I said I've got warehouses</p> <p>2 full of records. I said, you know, how can they not</p> <p>3 produce the records? He said Bernie, what do you</p> <p>4 want me to tell you? So you can imagine my anger</p> <p>5 when I was notified by you that there were 32</p> <p>6 million pages of goddamn documents. I'm looking at</p> <p>7 these documents now and all of a sudden miraculously</p> <p>8 these documents appear.</p> <p>9 Now, you can't possibly tell me that you</p> <p>10 didn't know, not you individually, that the Trustee,</p> <p>11 you know, did not know that these documents existed</p> <p>12 because I have -- I was paying rent on something</p> <p>13 like eight warehouses to say nothing of the whole</p> <p>14 basement of the Lipstick Building where I knew there</p> <p>15 were records, you know.</p> <p>16 And I'm not talking about necessarily, you</p> <p>17 know, what I'm seeing here. So how does that</p> <p>18 happen? I mean, you know, I don't understand it.</p> <p>19 MS. CHAITMAN: You know what, Bernie? I</p> <p>20 asked the same question. Okay. I have no further</p> <p>21 questions and I'm going to turn to Andrew.</p> <p>22 MR. KRATENSTEIN: I will be, I hope,</p> <p>23 brief.</p> <p>24 FURTHER EXAMINATION</p> <p>25 BY MR. KRATENSTEIN:</p>

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<p>1 Q. So Ms. Fein showed you a document, Mr. 2 Madoff, that she marked as Exhibit Number 11, which 3 was a house number five daily stock record activity 4 for July 16th, 1987. And she asked you some 5 questions about a County of Nassau, it's third from 6 the bottom, a County of Nassau bond. Is that a 7 municipal bond, the County of Nassau bond? 8 A. Yes. 9 Q. Okay. And did your firm do -- trade in 10 municipal bonds? 11 A. No. 12 Q. Did you have municipal bonds in your 13 custody, your firm's custody? 14 A. Yes. 15 Q. Okay. So what was your -- what did your 16 firm do with respect to municipal bonds? Can you 17 describe? 18 A. The clients used them as either margin or 19 with instructions to sell them to go into -- rather 20 than sending in cash to a strategy, they sent them 21 bonds to either be liquidated or to use as 22 collateral for a margin account. 23 Q. I'm going to show you Exhibit 38, which we 24 showed you yesterday. And just take a look at that 25 page. I've opened it to page MF 00964437, which you</p>	<p>1 firm? 2 A. Yes. 3 MR. KRATENSTEIN: Thank you very much. 4 That's all I have. 5 MS. CHAITMAN: Okay. I'd just like to put 6 on the record the discussion that I had with Amanda 7 that we will be continuing your deposition so long 8 as your health continues once we get further 9 documents from the Trustee. We're negotiating to 10 get additional documents that we now know the 11 Trustee has. 12 MS. FEIN: We just want to put on the 13 record that we would reserve a right to 14 cross-examine on any documents that Ms. Chaitman 15 asks about. 16 MS. CHAITMAN: Of course, of course. 17 Okay. Thank you so much. Andrew and I are going to 18 run. 19 THE VIDEOGRAPHER: We are off the record 20 in the November 9th, 2017 deposition of Bernard L. 21 Madoff, Volume IV. The number of discs used was 22 three. The time is 13:26. 23 (Reading and signing of the deposition by 24 the witness was reserved and the deposition was 25 concluded at 1:26 p.m.)</p>
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<p>1 might recall yesterday towards the bottom of that 2 page I showed you the RCA Corp convertible 3 debenture. And there are a whole bunch of positions 4 around that. Do you see that? 5 A. Where am I looking? Here? 6 Q. So bottom, if you look -- we talked about 7 this yesterday, but there are -- fourth up from the 8 bottom do you see the RCA Corp bond? 9 A. Yes. 10 Q. And then all around that do you see 11 municipal bonds like for Puerto Rico, Pennsylvania, 12 Oregon? 13 A. Right, uh-huh. 14 Q. Do you see that? 15 A. Yes. 16 Q. And they all have different maturities, 17 different yield dates -- 18 A. Right. 19 Q. -- right? So what are these? 20 A. They're municipal bonds. 21 Q. And are these the types of bonds you were 22 just describing? 23 A. Yes. 24 Q. And are these all real securities that were 25 held at the National Bank of North America for your</p>	<p>1 C E R T I F I C A T E 2 NORTH CAROLINA: 3 GUILFORD COUNTY: 4 I hereby certify that the foregoing 5 deposition was reported, as stated in the caption, 6 and the questions and answers thereto were reduced 7 to the written page under my direction; that the 8 foregoing pages 493 through 682 represent a true and 9 correct transcript of the evidence given. I further 10 certify that I am not in any way financially 11 interested in the result of said case. 12 I have no written contract to provide 13 reporting services with any party to the case, any 14 counsel in the case, or any reporter or reporting 15 agency from whom a referral might have been made to 16 cover this deposition. I will charge my usual and 17 customary rates to all parties in the case. 18 This, the 21st day of November, 2017. 19 20 21 <i>K. Denise Neal</i> 22 K. Denise Neal, RPR 23 Registered Professional Reporter 24 Notary Public No. 200517500101 25</p>

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<p>Page 683</p> <p>1 ERRATA SHEET</p> <p>2</p> <p>3 Pursuant to Rule 30(7)(e) of the Federal Rules</p> <p>4 of Civil Procedure, any changes in form or substance</p> <p>5 which you desire to make to your deposition</p> <p>6 testimony shall be entered upon the deposition with</p> <p>7 a statement of the reasons given for making them.</p> <p>8</p> <p>9 To assist you in making any such corrections,</p> <p>10 please use the form below. If supplemental or</p> <p>11 additional pages are necessary, please furnish same</p> <p>12 and attach them to this errata sheet.</p> <p>13 * * * * *</p> <p>14 I, the undersigned, BERNARD L. MADOFF, do hereby</p> <p>15 certify that I have read the foregoing deposition</p> <p>16 and that to the best of my knowledge said deposition</p> <p>17 is true and accurate (with the exception of the</p> <p>18 following corrections listed below).</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
<p>Page 684</p> <p>1 Page Line should read:</p> <p>2 Reason for change:</p> <p>3</p> <p>4 Page Line should read:</p> <p>5 Reason for change:</p> <p>6</p> <p>7 Page Line should read:</p> <p>8 Reason for change:</p> <p>9</p> <p>10 Page Line should read:</p> <p>11 Reason for change:</p> <p>12</p> <p>13 Page Line should read:</p> <p>14 Reason for change:</p> <p>15</p> <p>16 Page Line should read:</p> <p>17 Reason for change:</p> <p>18</p> <p>19 Page Line should read:</p> <p>20 Reason for change:</p> <p>21 Signature:</p> <p>22 Sworn to and Subscribed before me</p> <p>23 , Notary Public.</p> <p>24 This day of , 2017.</p> <p>25 My Commission Expires:</p>	

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